IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.46 OF 1985

1. (a) Balkrishna Pandharinath Badve
aged 41.

(b) Manohar Vithal Badve,age 68 yrs.
(Deleted)

(c) Dattatraya Kashinath Badve,age 59 yrs.
(Deleted)

(d) Narhar Vasudeo Badve, age 62 yrs.
(Deleted)

All residents of Pandharpur,
District Solapur

Appellant Nos.1(a) to 1(d) in their personal capacity as Members of Badve Community and Devotees of God Shri Vithoba and His Pariwar Devatas, and in the capacity of Samasta Badve Samaj of Pandharpur.

2. (a) Shrikant Narayan Badve, age 44 yrs.

(b) Prabhakar Haribhau Badve, age 40

(c) Vilas Krishnaji Badve, age 32 yrs.

(d) Subhash Bharat Badve, age 30 yrs.

(e) Vidhyadhar Haribhau Badve,age 32 yrs.

All residents of Pandharpur,
District Solapur.

Appellants Nos.2(a) to 2(e) in their personal capacity as Members of Badve Community and Devotees of God Shri Vithoba and His Pariwar Devatas and in their capacity as Chairman and members of Badve Committee.

3. (a) Giridhar Digambar Badve, age 59 yrs. **(Deleted)**

(b) Vyankatesh Bharat Badve, age 49 yrs. **(Deleted)**

(c) Gopal Tukaram Badve, age 31 yrs.

(d) Ganesh Shankar Badve, age 50 yrs.

(e) Sudhakar Pandurang Badve,age 39 yrs.

(f) Prakash Krishnaji Badve,age 36 yrs.

(g) Gopal Govind Badve,age 35 yrs.

All residents of Pandharpur, District Solapur.

Appellants Nos.3(a) to 3(g) in their personal capacity as members of Badve Community and Devotees of God Shri Vithoba and His Pariwar Devatas and in the capacity as Chairman and Members of Samasta Badve Mandal. ...APPELLANTS (Ori.Plaintiffs)

Versus

1. The State of Maharashtra

2. Shri Vithal Rukmini Temples Committee appointed under Sub-section 2 of Section 21 of Pandharpur Temples Act, 1973 through its members -

2-a) Shri Shashikant Gopalrao Page,
Chairman

2-b) Ramdas Maharaj Jadhav, Member,

2-c) Sampatrao Ramchandra Jedhe, Member

2-d) Gahininath Dnyaneshwar Maharaj
Ausekar, Member,

2-e) Vithal @ Madan Padmakar
Haridas, Member,

2-f) Vasudeo Narayan Utpat, Member,

2-g) Vilas Bharat Badave, member.

All c/o. Vitthal Rukmini Mandir,
Samittee, Pandharpur, Dist.Solapur.

(Notice to be served on Executive
Officer, appointed under the Pandharpur
Temples Act.)

3. Vasant Babaji Badve, age 58 years.
Occupation Badvepana, residing at
Badve Galli, Pandharpur, District
Solapur. ...RESPONDENTS
(Ori.Defendants)

.....

S/Shri.B.P.Apte , Sr.Counsel with S.M.Mhamane &
S.S.Patwardhan for Appellants.

Shri.Ravi Kadam, Advocate General with Shri.A.R.Patil, A.G.P. &
Shri.Shekhar Naphade, Special Sr.Counsel with (Smt.) Geeta
Mulekar, A.G.P. for Respondent No.1 & 3.

Shri.A.Y.Sakhare , Sr.Counsel with Shri.S.G.Surana for
Respondents 2 & 2(a) to 2(g).

WITH

SECOND APPEAL NO.52 OF 1985

(1) Pandurang Tukaram Utpat**.**
died during pendency of suit, by his son
Appellant No.7 Prakash Pandurang Utpat,
for himself and on behalf of rest of the
heirs of deceased Plaintiff No.1;

(2) Babaji Dnyaneshwar Utpat;

(3) Prabhakar Narayan Utpat;

(4) Bhagwan Gopal Utpat;

(5) Waman Ramchanra Utpat;

(6) Bhanudas Pandharinath Utpat;

(7) Prakash Pandurang Utpat;

(8) Rangnath Pandurang Utpat;

(9) Uday Bhagwat Utpat;

(10) Ashok Keshav Utpat.

Appellants on their own behalf as well as
respresentatives of their respective Taximas
of Utpats and also representatives of
Samast Utpat Committee of Utpats. ...APPELLANTS
(Original Plaintiffs)

Versus

1. The State of Maharashtra
2. Shri Vithal Rukmini Temples;
Temporary Committee appointed by
the State of Maharashtra under
S. 21(2) of the said Act consisting of-

PRESENT COMMITTEE

(1) Shri Shashikant Gopalrao Page,
Chairman of the Committee
Purnanda Society, Dongarsee Road,
Banganga, Walkeshwar Road,
Mumbai 400 006

(2) Shri Ramdas Maharaj Jadhav/Kaikadi
Member of the Committee
Kaikadi Maharaja's Math, Nave Peth,
Pandharpur.

(3) Shri Sampatrao Ramchandra Jedhe,
Member of the Committee
At & Post : Ambvade, Tal.Bhor,
District Pune.

(4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar,
Member of the Committee
At & Post : Ausa,
Tal. & Dist.Latur.

(5) Vitthal @ Madan Padmakar Haridas,
Member of the Committee
Kalyan Wada, Haridas Ves
Pandharpur, Dist.Solapur.

(6) Shri Vasudeo Narayan Utpat,
Member of the Committee
Radhanarayan, Paschimdwar
Pandharpur, Dist.Solapur.

(7) Shri Vilas Bharat Badave,
Member of the Committee
Utpat Galli, Pandharpur,
District Solapur.

3. The Executive Officer under the said Act
who is Sub-Divisional Officer,
Pandharpur. ...RESPONDENTS
(Original Defendants)

.....

Shri.Abhay Abhyankar, Sr.Counsel with Shri.R.S.Patil for Appellants.

Shri.Ravi Kadam, Advocate General with Shri.A.R.Patil, A.G.P. & Shri.Shekhar Naphade, Special Sr.Counsel with (Smt.) Geeta Mulekar, A.G.P. for Respondent No.1 & 3.

Shri.A.Y.Sakhare , Sr.Counsel with Shri.S.G.Surana for Respondents 2 & 2(1) to 2(7).

WITH

SECOND APPEAL NO.442 OF 1985

Shri Jagannath Gangaram Pujari,
Aged 75 years, Occupation Pujari
Sevadhari of Famous Vithoba Temple,
Pandharpur, Residing at
3000 Near Vegetable Market, Pandharpur,
Since deceased by his
Heirs and Legal representatives:
Shri Prakash Jagannath Pujari,
Age 38 years, on his behalf and on
Behalf of all Pujaris of the said Temple
Residing at 3000, Near Vegetable Market,
Pandharpur, District : Solapur. ...APPELLANT
(Ori.Plaintiff No.2)

Versus

1. The State of Maharashtra

2. Shri Vithal Rukmini Temple,
Temporary Committee, Consisting of-

(1) Shri Shashikant Gopalrao Page,

Chairman of the Committee

(2) Shri Ramdas Maharaj Jadhav/Kaikadi
Member

(3) Shri Sampatrao Ramchandra Jedhe,
Member

(4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

(5) Vitthal @ Madan Padmakar Haridas
Member

(6) Shri Vasudeo Narayan Utpat, Member

(7) Shri Vilas Bharat Badave, Member
All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer under the said Act
who is Sub-Divisional Officer,
Pandharpur. ...RESPONDENTS
Ori.Defendants)

WITH

SECOND APPEAL NO.443 OF 1985

1.Sakharam Vithal Paricharak
(Since deceased by his heirs)

2.Ramchandra Shankar Paricharak
(Since deceased by his heirs)
Madhav Ramchandra Paricharak,
Res.at 17/22, Pandharpur,
Representing all Paricharaks, doing
the religious duties & enjoying the rights
and duties of Paricharaks in Vithoba ...APPELLANTS
Temple in Pandharpur. (Ori.Plaintiffs)

Versus

1. The State of Maharashtra

2. Shri Vithal Rukmini Temple,
Committee, Through its Members:

2/1) Shri Shashikant Gopalrao Page,
Chairman,

2/2) Shri Ramdas Maharaj Jadhav,
Member

2/3) Shri Sampatrao Ramchandra Jedhe,
Member

2/4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

2/5) Vitthal @ Madan Padmakar Haridas
Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under
the Pandharpur Temples Act, 1973,
who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur, ...RESPONDENTS
Dist: Solapur. (Ori.Defendants)

WITH
SECOND APPEAL NO.444 OF 1985

1.Shri Haribhau Ramchandra Diwate,
aged 56 years, occupation Sevadhari,
Resident of 2712, Umade Galli,
Pandharpur (since Deceased).

2.Shri Vishnu Narayan Diwate,
aged 55 years, Occupation – Sevadhari,
Resident of Mendhe Galli, Pandharpur.
Died on 3/5/2004 :
Through Legal Representative:
Shri Ramesh Haribhau Diwate, Adult,
On their own behalf and also on behalf
of all Diwates doing the religious duties
and enjoying the rights of Diwates in
the famous temple of Vithoba in ...APPELLANTS
Pandharpur. (Ori.Plaintiffs)

Versus

1.The State of Maharashtra,

2.Shri Vithal-Rukmini Temples,
Temporary Committee, consisting of:

2/1) Shri Shashikant Gopalrao Page,
Chairman,

2/2) Shri Ramdas Maharaj Jadhav,
Member

2/3) Shri Sampatrao Ramchandra Jedhe,
Member

2/4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

2/5)Vitthal @ Madan Padmakar Haridas
Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under

the Pandharpur Temples Act, 1973,
who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur, ...RESPONDENTS
Dist: Solapur. (Ori.Defendants)

WITH

SECOND APPEAL NO.445 OF 1985

1.Gopal Narhar Dingare,

2.Krishnaji Digambar Dingare,

Both Appellants died : Through
their Legal representatives :

Shri Balkrishna Govind Dingare,
Occupation Sevadhari, Resident of
Chinchapur, Taluka Pandharpur,

On his own behalf as well as on behalf
of all Dingares doing the religious duties
and enjoying the rights and privileges of
Dingares in the famous Vithoba Temple, ...APPELLANTS
Pandharpur, District : Solapur. (Ori.Plaintiffs)

Versus

1. The State of Maharashtra

2. Shri Vithal Rukmini Temple,
Committee, Through its Members:

2/1) Shri Shashikant Gopalrao Page,
Chairman,

2/2) Shri Ramdas Maharaj Jadhav,
Member

2/3) Shri Sampatrao Ramchandra Jedhe,
Member

2/4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

2/5) Vitthal @ Madan Padmakar Haridas
Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under
the Pandharpur Temples Act, 1973,
who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur, ...RESPONDENTS
Dist: Solapur. (Ori.Defendants)

WITH

SECOND APPEAL NO.446 OF 1985

1.Bharat Digambar Dange,
age 27 years, Occu: Sevadhari,
residing at 909, Govindpura,
Pandharpur.

2.Digambar Gangaram Dange,
age 62 years, Occu: Sevadhari,
residing at 909, Govindpura,
Pandharpur.
On their own behalf and also on behalf
of other Danges doing religious duties
and enjoying the rights of Danges in ...APPELLANTS
the Vithoba Temple, Pandharpur. (Ori.Plaintiffs)

Versus

1.The State of Maharashtra,

2.Shri Vithal-Rukmini Temples,
Committee, Through its Members:

2/1) Shri Shashikant Gopalrao Page,
Chairman,

2/2) Shri Ramdas Maharaj Jadhav,
Member

2/3) Shri Sampatrao Ramchandra Jedhe,
Member

2/4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

2/5) Vitthal @ Madan Padmakar Haridas
Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under
the Pandharpur Temples Act, 1973,
who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur,
Dist: Solapur. ...RESPONDENTS
(Ori.Defendants)

WITH

SECOND APPEAL NO.447 OF 1985

1)Ramchandra Krishnaji Benare, age 77

2)Trimbak Vasudeo Benare, age 51

Both Appellants died : Through their

Legal respresentatives :

Shri Gopal Ramchandra Benare-Kale
Resident of 1788 Mendhe Galli,
Pandharpur, District :Solapur.

On their own behalf and also on behalf of all Benares doing religious duties and enjoying rights and privileges of Benares in Vithoba Temple, Pandharpur. ...APPELLANTS (Ori.Plaintiffs)

Versus

1.The State of Maharashtra,

2.Shri Vithal-Rukmini Temples, Committee, Through its Members:

2/1)Shri Shashikant Gopalrao Page, Chairman,

2/2) Shri Ramdas Maharaj Jadhav, Member

2/3) Shri Sampatrao Ramchandra Jedhe, Member

2/4) Shri Gahininath Dnyaneshwar Maharaj Ausekar, Member

2/5) Vitthal @ Madan Padmakar Haridas Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under the Pandharpur Temples Act, 1973,

who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur, ...RESPONDENTS
Dist: Solapur. (Ori.Defendants)

WITH

SECOND APPEAL NO.448 OF 1985

1.Pandurang Ganesh Haridas,
age 48, Occupation a Sevadhari,
residing at 1904, Near Bablyacha Nal,
Pandharpur.

2.Trimbak Digambar Haridas,
age 74 years, Occupation-Sevadhari,
residing at 1943, Pandharpur.

On their own behalf and also on behalf
of other Haridas doing religious duties
and enjoying rights of Haridas in the ...APPELLANTS
Vithoba Temple, Pandharpur. (Ori.Plaintiffs)

Versus

1.The State of Maharashtra,

2.Shri Vithal-Rukmini Temples,
Committee, Through its Members:

2/1) Shri Shashikant Gopalrao Page,
Chairman,

2/2) Shri Ramdas Maharaj Jadhav,
Member

2/3) Shri Sampatrao Ramchandra Jedhe,
Member

2/4) Shri Gahininath Dnyaneshwar
Maharaj Ausekar, Member

2/5) Vitthal @ Madan Padmakar Haridas,
Member

2/6) Shri Vasudeo Narayan Utpat, Member

2/7) Shri Vilas Bharat Badave, Member

All C/o Vitthal Rukmini Mandir Samittee
Pandharpur, District: Solapur.

3. The Executive Officer, appointed under
the Pandharpur Temples Act, 1973,
who is the Sub-Divisional Officer,
Pandharpur Division, Pandharpur, ...RESPONDENTS
Dist: Solapur. (Ori.Defendants)

.....

Shri.Vinit B.Naik for Appellants.

Shri.Ravi Kadam, Advocate General with Shri.A.R.Patil, A.G.P. & Shri.Shekhar Naphade, Special Sr.Counsel with (Smt.) Geeta Mulekar, A.G.P. for Respondents 1 & 3.

Shri.A.Y.Sakhare, Sr.Counsel with Shri. S.G.Surana for Respondents 2 & 2(1) to 2(7).

.....

CORAM : A.M.KHANWILKAR, J.

NOVEMBER 13, 2006.

JUDGMENT :

1. All these Appeals can be conveniently disposed of by this Common Judgment, as the issues raised therein are

overlapping and common.

2. These Second Appeals take exception to the Judgment and decree passed by the First Appellate Court, which in turn, has confirmed the Judgment and Decree passed by the Trial Court dismissing the Suit for declaration and injunction preferred by the Appellants. In all, nine separate Suits came to be filed. The Appellants before this Court are the three priestly classes such as *Badves*, *Sevadharis and Utpats,* who are associated with the ancient temples of *Vithoba* and *Rukmini,* popularly known as `Pandharpur Temples'. The *Badves* and *Sevadharis* are associated with the Vitthal Temple, whereas *Utpats* are associated with Rukmini temple.

3. Pandharpur town is one of the revered pilgrimage in Solapur district of State of Maharashtra. Thousands of people from far and near visit Pandharpur round the year. It is the most popular place of pilgrimage in the Deccan and greatest centre of attraction for the multitudes of devotees. It is located on the western banks of

the river *Bhimarathi,* also known as *Chandrabhaga.* Pandharpur is known as *Bhu-Vaikuntha*, the spiritual world on the earth. It is also called *Dakshina Dwarka*, the *Dwarka* of the South. There are two principal temples in Pandharpur known as *Vitthal* Temple and *Rukmini* Temple. *Shri Vitthal* is a form of Lord Krishna; the name *Vithoba* means father *Vitthala. Vitthala* is said to have been derived from the word *Vishnu* in Kannada. The deity is also called *Vithoba* or *Panduranga. Panduranga* is sanskritised form of *Pandarga*, the old name of Pandharpur. As the legend goes *Pundalika*, a saint was closely associated with this shrine, and hence this shrine is also known as *Pundarika Pura. Vithoba*' *s* concert is *Rukhumai* or *Rukmini.* The *Vitthal* of Pandharpur is undoubtedly the premier deity of Maharashtra. *Warkari Sampradaya* has developed around the temples of Pandharpur who preach in *Bhakti* cult, which is part of *Bhagvad Dharma*. Singnificantly, most enlightened minds of Maharashtra have dedicated to devotion or *Bhakti* of *Vitthala.* The *Vitthala* cult has attracted persons belonging to various castes and communities

from various professions and callings and all walks of life. The Pandhapur Temples are indisputably unique in several respects.

4. The above named three priestly classes assert that they have certain hereditary rights and privileges with regard to the affairs of the said temples at Pandharpur. As complaints were received by Government of Maharashtra regarding the mismanagement of the *Vitthal Temple, the Rukmini Temple, the Parivar Devatas* and *Vitthal-Rukmini Devasthan Committee*, the Government vide Notification dated October 21, 1968 appointed a commission of inquiry under the Commissions of Inquiry Act, 1982, consisting of Shri B.D. Nadkarni, District Judge (Retired) to inquire into and report to the State Government on the alleged mismanagement of the said Public Trust and other related matters. The Commission, after conducting extensive inquiry, submitted a well documented report dated January 31, 1970, to the State Government on 2nd February 1970. The said Report has come on record as *Exhibit 145*. The said Report is founded on information discerned from several documents as well as oral evidence. The

documents include gazettes issued by the appropriate authority from time to time as well as decisions in judicial proceedings between three priestly classes and the *Devasthan Committee* and others ensued from time to time. The report has considered relevant matters to record its opinion on several issues such as origin of the temples and idols, religious tenets of Shri Vithoba and the Warkari Cult, *Pujas and Upchars – Nitya and Naimittik:* together with the role of *Badves, Sevadharis and Utpats*, litigations between *Badves and Sevadharis* and between *Badves Devasthan Committee* and others as well as the properties and their management and the management of the temples and sources of income of *Badves, Utpats and Sevadharis*. The report has also noticed several complaints recorded against three priestly classes and the *Vitthal-Rukmini Devasthan Committee,* registered Public Trust under the provisions of Bombay Public Trusts Act, 1950 (hereinafter referred to as `the B.P.T. Act'). The report also considers the claim of the three priestly classes of being religious denomination. After indepth scrutiny of all the materials and evidence placed before it, the Commission recommended to the

Government that for better management of the temples and the properties of the temples and in particular, in the interest of the multitude of devotees regularly visiting the temples from far off distances throughout the Country, it was necessary to bring about changes as noted in the Report. The Commission recommended the State Government to abolish all the hereditary rights and privileges of ministrants and priestly classes functioning in the temples of *Vitthal and Rukmini* at Pandharpur, for the acquisition of such rights and privileges and for the vesting thereof in a Committee established under the Act for the purpose. The Commission has also recommended to payment of compensation to the respective priestly classes for the abolition of the hereditary rights and the privileges enjoyed by them. It may be useful to advert to the summary of the findings of the Commission on the points referred for inquiry. The same reads thus:

"CHAPTER XVII

SUMMARY OF THE FINDINGS ON THE POINTS REFERRED FOR ENQUIRY

Mismanagement acts and omissions amounting to

1. Having discussed in the earlier Chapters about the various complaints and the evidence regarding them, the position and privileges claimed by the priestly classes and the obligations and powers vested in the State under the Constitution, before formulating the recommendations it is necessary and desirable to summarise the findings on the specific terms referred to this Commission for Report in para.2 of the Notification. The findings of the Commission on the points are :-

(a) (i) There is mismanagement of both Vithoba and Rukmini trusts in that the objects for which the trusts exist are not fulfilled. As already pointed out mismanagement is not defined. But failure to discharge the duties and obligations even implicit in the management will amount to mismanagement. Several acts of commission and omission which singly or together will amount to mismanagement will be set forth presently. For the cult propagated by the temples which is one of Bhakti-marga which is eloquently expressed by the Warkari Sampradaya- regular visit to Pandharpur and Darshan of the deity are of the utmost importance among other things and, therefore, lacs of pilgrims visit Pandharpur, several thousands of them trudging on foot over hundreds of miles. The priestly classes exploit the situation that constructional short-comings of the temples cannot permit Darshan to all and, therefore, resort to mal-practice such as giving preference and facilities for Darshan only to those who pay and harass those who do not pay, not sparing them even from physical violence.

(ii) Constant demand of Dakshina at various points by various people belonging to the priestly classes from the devotees with harsh words if they fail to comply leave to the devotees little spiritual concentration in quest of which the devotees visit.

(iii) Constant quarrels and litigations *inter-se* between priestly classes tend to reflect on the peaceful atmosphere. The attempt of one class viz. Badves to appropriate all the offerings and to prevent others from soliciting for Dakshina which provide the only remuneration for the services rendered by them, when resisted, has led the continuous litigations and the demands have resulted in harassment of the devotees by those who have no other source of livelihood like the Badves.

(iv) No adequate arrangements or facilities are provided for the devotees who have to wait in queues, for hours together during the Ashadhi and other fairs though on some occasions waiting involved is 8 to 10 hours. It was the duty of the Badves who manage and take almost the entire income to provide these facilities. On the contrary, time for Darshan is curtailed by untimely pujas during which the doors are closed and for such pujas there being no fixed rates they prove very productive to the Badves.

(v) Accounts are not kept in a proper mode and such checks and safeguards as were provided under the Scheme framed by the High Court are attempted to be circumvented by creating new committees, such as Samasta Badve Mandal, and Badve Samaj both representing the identical community which is properly and effectively represented by the Badves Committee appointed under the Scheme.

(vi) Though there is *prima facie* evidence of endowments they are not accounted for both by the Badves and Utpats as well as Sevadharis. Encroachments on parts of the temple property appear to have been allowed and connived at in the City Survey Enquiry by conceding to the claims and even there was an adverse claim by one of the Badves in respect of a room before the Commission.

(vii) The attitude of the management is such that in some matters no differentiation is made between what should be credited to the Devasthan and what should go to the Badves and Utpats as for instance copyright of photographs of Vithoba and Rukmini, the sale proceeds of which are appropriated by the individuals. So also rents or fees recovered by letting out halls in the temples and spaces are also appropriated by the Badves though none of these fall under the head of offerings to which they are entitled under the scheme.

Utpats do not have any stable management and even their accounts have been noticed to be incomplete and unsatisfactory. Though Rukmini trust is registered under the Bombay Public Trusts Act 1950 instances have been noticed in the course of the evidence where the provisions of the Act have not been respected or observed in spite of warnings and action by the Charity Commissioner. It is, therefore, clear that

there is mismanagement of both Vithoba and Rukmini Trusts. Though Pariwar Devatas really form part and parcel of the Vithoba Trust, the Badves have got it registered as separate trust for reasons which are obvious from what is stated above. So far as the Devasthan Committee Trust is concerned there are no allegations of any mismanagement and the tussle between this Trust and the Badve Committee has been dealt with sufficiently in the earlier part of the Report. In fact there will be no occasion for continuance of this trust as a separate entity if the recommendations made by this Commission are accepted and put into effect.

Sources of income

(b) There are no stable sources of income both for Vithoba and Rukmini trusts except the original cash allowance of Rs.3,000 granted by the Raja of Satara to Vithoba and Rukmini which is now increased to Rs.10,000 and is the only property under control of the Devasthan Committee Trust. Though under the scheme framed by the High Court for the Vithoba trust provision is made that offerings of cash exceeding Rs.500 should go to the Vithoba fund, since the date of the Scheme which was 1896 there is only one such offering. There is a small negligible amount of rent for a small building know as Terkarwada endowed to the deity and some fees recovered from vendors of flowers sitting inside- all these amounting to about Rs.500 a year. In the case of Rukmini temple prior to the decision in appeal No.62/60 whole of the income from offerings used to be taken by the Utpats. But after the decision half of it is directed to be spent for expenses and the maintenance of the temple allowing the other half to be appropriated by them. So except the cash allowance referred to in favour of Vithoba and Rukmini there are no other mentionable sources of stable income. The result is that for repair and renovation of the temples or improvements of surroundings both Vithoba and Rukmini trusts have to seek public charity- indeed a sad situation for temples of such eminence in Maharashtra. It may be observed here that all offerings made in cash and kind to the deities and income from pujas and upchars offered to the deities, should really belong to the deities, if not the whole, at least a part leaving the balance for the maintenance of services including of those who are engaged in them. But unfortunately either by reason of judicial decisions or by custom and usage no part of what

should really belong to the deity for utilisation for the benefit of the real beneficiaries- the devotees remains. The Scheme judgment recognised the right partly upon the custom and usage enjoyed by the Badves which in turn was relied upon by the then Suzerain Power to recognise that right. With respect the Commissioner feels that a custom which has the effect of leaving the trust indigent is an unreasonable custom. The Commission cannot help referring to the quotation from the Halsbury's Laws of England appearing at page 65 of the Report of the Committee of enquiry into the affairs of Dargah Khwaja Saheb (Ajmer) headed by Mr.Justice Ghulam Hasan of the Allahabad High Court. The Committee has observed :-

> "A custom, it has been said, must be reasonable. If it be against reason it has no force of law. The reason here referred to is not to be understood as meaning every unlearned man's reason but artificial and legal reason warranted by authority of law . . . . When, however, it is said that the custom is void because it is unreasonable, nothing more is meant than that the unreasonable character of the alleged custom conclusively proves that usage, even though it may have existed from time immemorial, must have resulted from accident or indulgence, and not from any right conferred in ancient times on the party setting up the custom.
>
> . . . . An alleged custom which is contrary to the public good, or injurious are prejudicial to the many and beneficial only to some particular person is repugnant to the law of reason ; for it could not have had a reasonable commencement. Alleged customs which appear to have been founded in wrong and usurpation, and not on the voluntary consent of the people to whom they relate, are counted unreasonable and are void in law."
>
> -(Halsbury's Laws of England, Vol.X.2nd Edition, pages 8 and 9).

Claims to endowments

(c) and (d) : Though there is *prima facie* evidence of endowments in favour of both the trusts information is evaded and not forthcoming from Badves, Utpats and Sevadharis on the ground urged by Badves and Utpats and Sevadharis that

the representative committees of management have no knowledge of endowments standing in the name of individual Badves, Utpats and Sevadharis. Individuals have not come forward to supply the necessary information though notice was given to them through their represent not only committees but even the classes which the committees represent namely the Badve Committee, the Utpat Committee and the Sevadhari Committee.

Appropriation of income

(ii) All the surplus remaining after meeting the expenses out of the income from offerings below the limits imposed by the Scheme judgment in appeal Nos.141 and 168 of 1892 in the case of Vithoba and half of the income from offerings as decided in appeal No.62 of 1960 before Rukmini after using the half for expenses is being distributed respectively among the Badve and Utpat families.

(iii) So far as Sevadharis are concerned for the services rendered by them in the nitya or daily pujas and upchars they do not get any remuneration from any source except the pujaris who get `Ovalni', so that they have to fend themselves by soliciting Dakshina from the various devotees that visit the temple which practice has become irksome, not only to the devotees but even to the Badves. In respect of the pujas for which the Yajmans are introduced many a time either by a Badve or a Kshetropadhyaya or a person following a profession of Yajmankritya, out of the income which is represented by an amount which is the subject matter of contract between the procuror and the Yajman, the procuror gets the lion's share, Badve or Utpat as the case may be, next to it, and the Sevadharis who had to perform actual rituals a very small amount, with nothing reserved for the deities or their trusts. The material purchased for the puja though its value is shown to be considerable goes to the Badves or Utpats as the case may be.

Committees of Management : Badve Committee, Samasta Badve Mandal and Badve Samaj

(e) (i) The Vithoba temple is supposed to be under the management of the Badve Committee to be appointed in the manner prescribed in the scheme, consisting of five

members, four of whom representing the four Takshims or branches of Badves. They are elected by the respective Takshims and the fifth is elected by the four representatives elected by the Takshims. This Committee is elected every year. Though this committee represents the entire Badve community, since 1937 a new committee called Samasta Badve Mandal is brought into existence by adopting what is called a constitution. It consists of nine members out of whom two are elected by each of the four Takshims, the 9th being nominated by the 8 members. The period of Office of this committee also is one year. Through the ostensible object of bringing into existence the Samasta Badve Mandal is to manage the work of distribution of collective income of the Badves among different families, in the earlier chapters it has been pointed out that this new Badve Mandal exercises not only some of the powers of the Badve Committee but has to approve of certain actions of the Badve Committee and thus enjoys an overriding position. On the basis of the ostensible purpose for the formation of the Badve Mandal, while registering the Vithoba trust before the Charity Commissioner it is registered in two parts—Part-I represented by the Badve Committee which is supposed to administer the Vithoba fund which as pointed out above is negligible and the movable and immovable properties of Vithoba which except Ornaments and the temple building consist of nothing of much value. Part-B is represented by the new body Samasta Badve Mandal which manages all the offerings below the limits prescribed by the Scheme so that while the Badve Committee appointed under the Scheme has very little to do and hence is reduced to a nominal position, it is the Badve Mandal brought into existence in 1937 that gets under its control practically the entire income of the offerings and the accounts of the Badve Mandal are not subjected to audit by the Devasthan Committee which was specifically entrusted with the work of audit under the Scheme judgment.

(ii) In addition to these two Committees very recently a third body under the name of Samasta Badve Samaj is being put forward though it has no constitution of its own and though the Badve Samaj constitutes the whole community of the Badves who have already two bodies representing them viz. Badve Committee and the Badve Mandal.

Samastha Utpat Committee

(iii) In regard to the Rukmini temple including its Pariwar Devatas there is no scheme and none was found necessary by the High Court on the assumption that they have a constitution adopted by them providing for management. In the body of the Report it has already been pointed out earlier that the Constitution adopted by the Utpat Committee which has been done just before registration of the trust has not only been not effective but there has been no stable management which could keep proper control over the funds or the income. The committee under their constitutioni s of 5 persons four of whom are made up by each of their four Takshims electing one member and the 5th being nominated by the four elected members. The election is to take place after every four years. Their treasurer who is in possession of all the jewellery and valuables does not appear to be among the elected persons and as has been noticed earlier the ornaments were found to be in charge of the son of the deceased treasurer who has no locus-standi except as a member of the Utpat family.

Devasthan Committee

(iv) The Devasthan Committee consisting of five members, was originally appointed by the British Government in 1854, when the East India Co. divested itself of the control over the temples and religious institutions all over India in pursuance of its traditional policy to rid itself of responsibility for the management of the religious endowments and at the same time make provisions for proper administration in the future. The Committee was recognised under the scheme and was entrusted with the duties of audit of the funds of Vithoba trust. The members of the Committee did not have any fixed tenure so that they were members for life but any vacancy occurring by death or resignation is being filled up by co-option by the remaining members.

(v) There is no scheme for the management of Pariwar Devatas of Vithoba, which are registered as a separate trust but the Samast Badve Mandal manages the said trust. The mode of election to this Mandal has already been stated.

Persons claiming right to management and Service

(f) Badves have right of management of the Vithoba trust as well as of the Parivar Devatas. Under the Scheme Judgment they have a right to all the offerings subject to the limits described therein with a liability to meet the expenses of the nitya upchars and the maintenance of the temple. Their rights in regard to service are described as Chief Priests, Managers, Guardians and Overseers, and these rights have been adequately discussed in the earlier chapters. Seven Sevadharis have hereditary rights of service in the Vithoba temple but in respect of the daily pujas and upchars no provision is made for their remuneration. On the basis of custom, the pujari is allowed to demand and take ovalni by way of a second offering, near the deity. The other Sevadharis can solicit for dakshina outside the sanctum. In respect of Yajmanpujas in consideration of the exercise of hereditary rights the Sevadharis collectively get a small portion from either the Yajmans or through the Badves which is divided by them according to their shares. Badves take the entire income from the offerings made before the Parivar Devatas, their claim being that after meeting the expenses of Parivar Devatas they are entitled to appropriate the surplus and the question is sub-judice.

Utpats.- So far as Rukmini temple is concerned hereditary right both of management and service is claimed by Utpats.

Kshetropadhyes.- So far as Kshetropadhyes are concerned the only hereditary right claimed by them is the one to accompany their Yajmans or clients upto the sanctum which can by no means be called either a right to management or right to service.

Kolis and Garud Temple of Benaris.- So far as the claims of Kolis in respect of deities situated in the precincts of the temple and the right of Benaris regarding Garood temple are concerned provision is made for payment of compensation."

5. The Commission made recommendations to the State

Government, inter alia, regarding the abolition of the hereditary rights of management of the trust and appropriation of the income and the terms and conditions thereof; or if the rights were to be retained, whether they should be curtailed, and if so, to what extent and consequently, what should be the arrangement for proper management of the trust? The principal recommendations made by the Commission are noted in Chapter XVIII. The same reads thus:

"CHAPTER XVIII

RECOMMENDATIONS

1. Under the terms of reference the suggestions or the recommendations asked for from this Commission can be broadly classified into two categories viz. Whether hereditary rights to management of the trusts and appropriation of the income thereof should be abolished and if so on what terms and conditions or if the rights are to be retained whether they should be curtailed and if so to what extent and secondly what should be the arrangement for proper management of the trusts. The first category refers to para.3(c) and the second to para. 3(a), (b), (d) and (e). Besides these two, suggestions are asked for on any other matter considered relevant. It would be convenient first to deal with the points covered by para 3(c) concerning abolition of hereditary rights. Though this question is discussed generally in the earlier Chapter it would bear repetition in a concrete form in this Chapter on recommendations.

Hereditary rights of Badves and Utpats

2. Badves and Utpats enjoy hereditary rights in respect of Vithoba and Rukmini trusts respectively of two types (1) right of management, (2) right of service. The seven types of Sevadharis in Vithoba Temple and Kshetropadhyayas in the Town of Pandharpur enjoy respectively hereditary rights-- the Sevadharis pertaining to the service in the Temple and the Kshetropadhyes

service to their Yajmans coming on pilgrimage in respect of Sevas and rituals which they intend to perform. All these classes follow the profession known as Yajmankritya or service rendered to Yajmans which consists, among other things, of receiving the pilgrims, putting them up and making arrangement for their food and residence. This is not necessarily a hereditary right or profession for, since the payments made by the pilgrims prove profitable the profession is being followed not merely by the priestly classes whose ancestors were following this profession but even others who have houses and rooms to spare and means to put up and cater to the necessities of the pilgrims. None of the trusts is directly concerned with this profession of Yanmajkritya.

3. A few witnesses, some of them ladies and some among the sophisticated class suggest that hereditary rights should not be completely abolished forthwith and that a chance may be given to effect necessary change and improvements in the management of the temple. The Commission feels that this suggestion which is voiced is prompted firstly by sentiments based upon the fact that the priestly classes have enjoyed the hereditary rights since time immemorial and secondly by a fear that if the present set up is substituted by a new one the religious requirements of rituals now in the hands of persons trained hereditarily for priestly duties may suffer. All these witnesses however have stated unequivocally that a change in the methods is necessary so as to be conducive to the convenience and satisfaction of the pilgrims. The Commission feels that there are no valid grounds for continuing the hereditary character both in regard to management and service. In the earlier chapter the Commission has discussed the evidence in detail and pointed out that none of the grievances of the devotees or their complaints though genuine have been rectified even though they have been existing during the last 2 or 3 centuries, that quarrels and disputes *inter-se* between the priestly classes resulting in repeated litigations have not only not stopped but have been continued even after this Commission was appointed, that suspension of vritti at least twice by the former Rulers and solemn undertakings given for good behaviour to obtain restoration of the vrittis and warnings administered in no uncertain terms by the Courts including the High Court repeatedly have had no effect to ensure a solemn and peaceful atmosphere in a temple and a place of pilgrimage where large number of devotees flock in search of solace. Endowments have not been accounted for, immovable properties have not been properly protected by

preventing encroachments and adverse claims, no attempt made for developing the surroundings to provide proper amenities to the pilgrims and make the temple attractive. Lastly if the hereditary rights have left the trusts so indigent that they have to depend upon charity and donations for improvements reconstruction or development of surroundings and if donations and charities have been shy in coming forth for want of confidence on the part of the donors that their donations would be properly utilised for the benefit of the temples, there is no purpose in allowing a further continuance of the hereditary rights. Again the present established rights etc. is a parasitic growth on the fundamental necessities for maintaining a temple arising out of greed of the persons in charge of and connected with the management and the ignorance and indifference of the society and the unstable political power and as such requires to be rooted out in public interest when society is becoming conscious of its rights and duties and it is necessary to give to the society a clean slate to fulfil its religious and other aspirations.

Combination of duties of Master and servant-effect

4. Then again the merger and fusion of hereditary rights as master and servant in the same person can never be conducive to the interest of the real beneficiaries who are third parties viz. Devotees. History in this case points to this fact emphatically so far as Badves and Utpats are concerned. In the suits of 1882 to which detailed reference has already been made Badves had claimed ownership of the temple, deity and the property. Though they succeeded in this claim in one suit it was negatived by Mr.Satyendranath Tagore in the others that followed and the High Court finally confirmed the findings of Mr.Tagore holding in effect that the temple is a public trust and the property is the property of that trust. Notwithstanding, Badves succeeded in the Scheme suit in establishing, on the ground of custom and usage, their rights to substantial part of the offerings which in effect has left the trust without any substantial income or fund. Reference has already been made to the evidence showing that Badves in their capacity as managers have not maintained much difference between what should be their private property and what should be the trust property or income. New committees with new ostensible purpose but which really are intended to circumvent the checks imposed by the Scheme have come into being. Endowments made to the trusts stand in the name of individuals who have refused to co-operate and give information. In short

the course of conduct throughout, after the scheme, has been such as to indicate a tendency not to differentiate between the property and the income of the trusts from that of the class of Badves.

5. Similar is the situation in the case of Utpats who are in management of the Rukmini trust by right of hereditary and who have also hereditary rights of service. There was no occasion for a suit to have a scheme framed in their case. But after the Bombay Public Trusts Act came into force the Utpats claimed before the Charity Commissioner what Badves had claimed and failed in 1882 that they were the owners of the deity, temple and property. In fact the representative of the Utpats in the party examination before the Commission, attempted to trot out the same claim though immediately, he tried to modify it in view of the earlier evidence. Needless to say that the claim of ownership was negatived and the trust was held and registered to be a public religious and charitable trust. However the Utpats insisted that they have the right to the entire offerings. Ultimately the High Court held in the appeal against the orders of the Charity Commissioner that half of the offerings should be appropriated by the Utpats and the other half spent for the expenses and upkeep of the temple. Reference has already been made in the earlier Chapter to the management of the Utpats and it is not necessary to repeat it.

6. From what is just stated it is quite obvious that the position of Master and Servant cannot co-exist and, therefore, ultimately the two capacities will cease to exist separately. The inferior of the two capacities will merge with the superior and the servant is bound to become the master.

Whether desirable to continue one of the two hereditary rights

7. If for the reasons just stated two hereditary rights viz. Management and service should not be allowed to continue in the interest of the trusts, the next question is whether it would be in the interest of the trusts or in other words of the public to allow any one of them. From the experience gathered by the Commission in the course of its visits to Badrinath, Ajmer, Nathdwara, Jagannath Puri and Tirupati-Tirumalai, the Commission feels that it would not be conducive to smooth working of an institution and fulfilment of its objects to preserve

any of the hereditary rights as they are now enjoyed by the Badves and Utpats though recognition could be given to them in a modified and qualified form to satisfy the doubts of those who feel that the quality of the rituals might suffer by abolition.

Experience at the Ajmer Dargah and Nathdwara

8. .....

Experience at Jagannath Puri

9. .....

Abolition of hereditary right recommended

10. After giving the most anxious consideration to all the aspects the Commission feels that hereditary rights of Badves and Utpats both of management and service and of all other Sevadharis who have only the rights of service should be abolished. Needless to say that preservation of any one of the two hereditary rights viz. Of management or service in Badves and Utpats would be a source of constant trouble because possession of one is liable to be used as a lever or means to gain the other. Therefore for the reasons just stated question of preservation of some rights or curtailment of any existing rights does not survive for any discussion. However, to satisfy the apprehension of some of the witnesses who have advocated preservation of some rights the Commission thinks that after abolition of the hereditary rights to service while making appointment for the same service on the basis of salary as remuneration the source should be maintained as far as practicable by appointing suitable persons properly qualified from among Badves, Utpats and Sevadharis as the case may be for rendering such service as they have been doing without curtailing any of the religious practices that have been observed and respected. Needless to say that when hereditary rights are abolished right to offerings as income or share in it also would have to be abolished and all the rights and powers shall vest in and duties and obligations cast on the Administration to carry out all religious services to the deities and secular management of the temples. Therefore, making appointment of the necessary staff, duly trained, from the same source, as far as possible, of suitable persons on a decent living wage to keep them

comfortable with all service benefits should be provided for.

No necessity to propose machinery for determination of the compensation as it is dealt with earlier

11. The Commission has already dealt with in other chapter, the power of the State to abolish hereditary rights in "public interest" and has also proposed the quantum of compensation to be paid to each of the classes after enunciating the principles. There is, therefore, no necessity to propose any machinery for determination of the compensation or the source because that is also discussed and indicated in the same chapter. For distribution of the compensation provisions are proposed in the draft enactment. Since the Commission has proposed abolition of the hereditary rights of management it will have to propose what it considers would be proper machinery to carry on the management of the trusts and also for each service persons may have to be appointed on salary basis.

Retention of posts of Badve, Utpat and Sevadharis

12. At this stage it would be difficult for the Commission to say how many persons would be necessary for each of the service rendered by Badves, Utpats and Sevadharis. It has already been pointed out that the Badves do not have to play any active part in the worship or upchars, though they are designated as Chief Priests, Managers, Guardians and Overseers. If hereditary rights of management are abolished the capacity as managers and guardians will also disappear as they will have little to do in these capacities. To preserve their position as the chief priests and overseers the only work that could be entrusted to them in keeping with the dignity of the idol and importance of the temple is that of remaining present for directing of pujas and service.

Maintenance of visible aspects of God's Dignity

13. Dr.Mrs. Iravati Karve in the course of her conversation with the Commission when on a visit to the Deccan College Research Institute after the hearing of the evidence and arguments was over stressed that Vithoba is described as "Pandharicha Rana". He is some times described also as "Vaikunthicha Raja". In keeping with this description attendance

on the deity and the service from different classes of Sevadharis are being rendered. Dr.Karve stressed the necessity of maintaining the dignity of the deity by keeping intact all the paraphernalia and practices. The Commission also feels that reduction in any of the outer and physical attributes of dignity and position would violate the sentiments of the devotees and therefore, all services with all the pomp and dignity would have to be preserved. Philosophers and economists may argue that strict requirements of religion do not have value for the listening rituals. But the idol being regarded as personification of super being, sentiments of the devotees would demand preservation of all the attributes of pomp and dignity in keeping with the unique position attributed to the deity. The Commission noticed that all such ritual practices are maintained in all the important temples not merely in the case of deity and idols but even in the case of the principal servants who enjoy some spiritual status. For instance, in the case of the Raval at Badrinath he preceded by persons holding a sceptre while coming into the temple and back. The Tilkayat at Nathdwara and the Mahant at Tirumalai are preceded by liveried attendants. In fact at Shri Vyankatesh temple at Tirumalai the Commission witnessed what is called a Darbar held every morning at 9 a.m. When a Report is read out before the idol placed on a golden throne outside the sanctum to inform the idol about the collection of the previous day and details of the administration. The Commission, for the reasons just stated, recommends continuation of the posts of Badves and Utpats in addition to seven Sevadharis. The number of suitable incumbents to be appointed for each of these classes or the terms of salary would have to depend upon the duties to be performed, the load of work, and the financial conditions and these matters can be left only to be determined by the future administration which will have to exercise the powers of appointments, removal as well as other disciplinary powers. So far as the devotees are concerned they should not have a feeling that any of the services or the servants are omitted or the paraphernalia of the deities curtailed because sentiments towards God form an integral part of devotion."

6. In Chapter XIX, the Commission has highlighted that upon abolition of hereditary rights of management which were

being exercised by *Badves and Utpats*, there was necessity to provide for an effective administration that would be capable of not only removing all complaints and grievances of the devotees and the public, but also of meeting the trends of the modern thought and aspirations that a temple, as a religious institution, in addition to fulfilling the spiritual needs of the public should further the cause of the well being and betterment of the Society in the field of social amelioration, education, etc. Some useful suggestions have been made in that regard in this Chapter.

7. In Chapter XX of the report, the Commission has made other recommendations on matters which it thought were relevant and consequential to the recommendations made by it in the earlier part of the Report. The same read thus:

"**OTHER RECOMMENDATIONS**

> **1.** Since the earlier Chapters are devoted to the terms of reference, the findings and recommendations of the Commission thereon, in this Chapter the Commission proposes to discuss other matters relevant or following from the recommendations made in the earlier Chapter. In the previous Chapter the Commission has proposed appointment of a Committee. The Legislation to be

passed in respect thereof will have to specify the powers of the Committee as well as the Administrative Officer. But at this stage it is necessary to make it clear that constitution of an independent Committee with an administrative Officer will not affect the general powers of supervision vested in the Charity Commissioner of the Maharashtra State under the Bombay Public Trust Act, 1950. Since a separate legislation is going to be proposed if that if passed certain provisions in the B.P.T. Act. Will be inapplicable to the amalgamated trust and those provisions will be indicated in the Draft enactment. The administrative Officer to be appointed having been proposed to be not lower in status than a Deputy Collector in service but whose services are loaned, the Commission feels that he should be entrusted with wide powers including those of appointment, disciplinary action including dismissal of the trust servants etc.

2. Having dealt with the general aspect so far the Commission proposes to make concrete proposals in regard to some matters which have been the subject matter of grievances and complaints from the public under the different heads viz. Darshan, Pujas, Offerings, properties and utilisation of funds etc. The Commission is fully conscious of the fact that such concrete recommendations cannot aspire to be exhaustive because difficulties will continue to crop up. However the Commission feels that the administration that may be set up will be able to tackle them and it will be sufficient for the Commission to mention a few suggestions indicative of the lines on which the improvements could be effected. For brevity they would be mentioned under different heads.

Darshan

(See Chapter VI)

(i) Padsparsha Darshan should be restricted and eventually stopped in view of the slow damage resulting from constant friction to the feet of the deity. Instead Padukas can be kept at the threshold of the sanctum as the Alandi administration has done. Meanwhile, it is suggested that the feet of the deity may be covered with a suitable type of gold or silver covering either of footwear or of the shape of feet so

that the friction would be reduced.

(ii) Before it is possible to abolish Padsparsha Darshan completely it should be restricted to certain hours which could be progressively reduced till it is possible to abolish altogether. The Commission does not advisedly propose any fees for Padsparsha darshan during the restricted hours because the Commission feels that it would be attempting to put a price upon the devotion of the pilgrims even though such a fee would augment the income. During the wari days in order to provide Darshan to the maximum number of people Padsparsha Darshan should be suspended wholly. In this connection it may be pointed out that "Padasparsha Darshan" was being suspended for 37 days during the four waris every year by a proclamation, dated 7th January 1857 during the British Regime in the interest of safety of the people and maintenance of order (*Vide* Ex.578). It appears that in subsequent years as a result of persistent representations of the priestly classes the proclamation was not enforced.

(iii) After consultation with experts, steps should be taken to open one or two more doors to permit entry of more than one queue and a similar number of exists, so that the number who can get Mukh-darshan can be doubled or trebled. One of the witnesses Col. Gupte (Ex.688) suggested construction of a conveyor belt which can help quick movement of the pilgrims. The Commission feels that while the use of a conveyor belt may be possible for pilgrims content with mukh-darshan, it will not be practical or feasible in regard to Padsparsha Darshan because the idol of Vithoba stands on a pedestal and the feet of the deity are at a distance of a cubit from the edge of pedestal.

(iv) The Commission noticed a number of unnecessary barricades and sort of partitions upto a height of about 10 feet, making it appear that the pilgrims moving in a queue are put in a cage like an animal or prisoners before they enter the Solkhambi Hall. Such unseemly constructions liable to violate human dignity should be removed and instead systematic barricades with detachable iron pipes should be constructed. For the devotees waiting in a queue proper sitting facilities and provision of drinking water within easy reach should be made so also clean sanitary arrangements outside the temple premises.

(v) The Commission having noticed that on wari days people have to wait for 8 to 10 hours the Commission recommends that in order to remove the tedium of waiting and in keeping with the mental attitude of the devotees, devotional music should be broadcast as is being done not only in the temple at Tirumalai but in the whole town.

(vi) Mr.Nabar, D.I.G. Wireless of the Police Department recommended introduction of small Television screens at different spots so that people who have to wait long hours can at least get satisfaction from seeing a picture of what is going on in the sanctum. Mr.Nabar has recommended points for Walkie-Talkie wireless sets which can help communication and lead to orderly arrangements. During the Ashadhi fair the Commission witnessed the arrangement personally supervised by Mr. Nabar and found that the suggestions made by him if carried out will go a long way towards better management of the crowd.

(vii) The Commission feels that reservation of time for particular classes of priests to take their own yajmans should be abolished as it has led to undesirable practices resulting in exploitation and great discontent among the general class of devotees. However a short period of the day could be reserved for such persons who cannot wait or who are in a hurry to leave Pandharpur but from them some money in the shape of an offering can be taken.

(viii) Time of pujas should be restricted, by insisting that no puja should take place in the afternoon beyond say 1 p.m. As pujas occupy in Pandharpur a secondary place in importance. This will provide more time for Darshan to the pilgrims to which great importance is attached.

(2) Pujas

(*See* Chapter VI)

(i) A Schedule for pujas and archans or upachars should be fixed so as to cover the cost of material, payment to those who render service during their conduct and a decent proportion for the trust.

(ii) All payments in respect of pujas, archanas or

upachars according to the schedule should be recovered in the Administration Office and every payment should be receipted.

(iii) After determining the number of Yajmans that can be accommodated, pujas of all those people can be performed simultaneously. After consultation with experts it

should be seen whether more space can be made available in the sanctum.

(iv) During the pujas mukh-darshan should continue to be allowed from a distance so that it will enable as many people as possible to get, if not Padsparsha darshan, at least mukh-darshan of the deity.

(v) The desirability of making the right of officiation as yajman for sarkarik puja on wari days as a prize by drawing lots on the previous day by selling tickets as in the case of a lottery. The Commission feels that if a rupee per ticket is fixed at Ashadhi and Kartiki waris a large number of people is likely to come forward to try their luck at having both darshan which is extremely difficult and officiation as yajman at the puja at close quarters of the deity.

(3) Offerings

(i) Boxes should be kept in front of the deity and at all other points publicising by notices at all prominent points that all offerings put in the boxes will go to the trust fund.

(ii) Solicitation of Dakshina, offering, Owalni or tip in the temple premises should be prohibited.

(iii) Where gifts are made for specific purpose they should be utilised for those purposes.

(iv) Where devotees place money or offerings into the hands of erstwhile priests and sevadharis or persons professing yajmankritya outside the temple premises those will belong to them.

(v) If the devotees want to pay any Dakshina to any priest in the service of the Administration he should do so

through the Administration Office.

(vi) The temple servants, whether priests or others should be prohibited from receiving any dakshina or tip directly from the devotees.

(vii) All non-perishable given or placed as offerings of whatever value shall belong to the trust. The trust will open a store in which all things of a value not more than Rs.100 could be sold as Prasad to the devotee for a fair price.

(viii) The Commission noticed that what is taken by the pilgrims while leaving Pandharpur as Prasad consists of eatables, Kumkum, Bukka etc. purchased from shops in Pandharpur which cannot be really called Prasad because it is not offered to the deity. If the store run by the Administration undertakes to get prepared eatables and other such things taken as Prasad and after offering them to the deity as Naivedya packs them in suitable packets and sells the same to the devotees it might bring good income. The Commission noticed both in Puri and Tirupati that such offerings sold as Prasad bring considerable income. The sale proceeds should be credited to the trust fund. Offerings to the Deities of a value exceeding Rs.100 shall be disposed of according to the orders of the Administrative Officer. In respect of the Articles valued more than Rs.500 they will be disposed of under the direction of the Committee. Bye-Laws may be prescribed by the Administration in this behalf.

(ix) All perishables and food offerings shall be distributed as prasad following the by-laws if any prescribed in this behalf.

(4) Properties

The Committee should take immediate steps to have enquiries made in regard to properties belonging to any of the trusts entrusted to it, but not actually standing in the name of the trust, endowments standing in the name of individuals from the priestly classes meant for Naivedya or bhog to any of the deities or for such purposes as are connected with the temple. Similarly the committee should take steps to investigate and determine whether any of the areas surrounding the temple have been encroached upon by others

and take steps in connection therewith for recovering the same or acquiring the same recovery is out of question.

(5) Ornaments

The Committee should also take charge of the ornaments and take immediate steps not only for their proper storage and custody but also for their insurance. The Religious Endowment Commission has at page 58 of the Report observed that archaks and Pujaris should not enjoy any proprietory rights of custody of the jewels and other valuable article belonging to the Temple [*See* para.59(4) of Chapter V].

(6) Utilization of Fund in the order of Priorities

(i) After meeting the expenses of the temples including of the administration and provision for repairs 5 per cent of the surplus shall be set apart to form a Reserve Fund.

(ii) Such amount out of the surplus as is necessary should be utilised for payment of Government loan, with interest, if any, advanced for payment of compensation to acquire hereditary rights.

(iii) Development of surroundings such as removal of encroachments, acquisition of sufficient areas and construction of places for accommodating pilgrims and providing facilities during the fair, supplementing funds by raising donations for this purpose.

(iv) The Committee should take steps towards establishment of an institution for imparting religious instruction, for propagating the tenets of Bhakti-marga and for training of people for customary services in the temple, and building up a library of religious books and manuscripts emphasis being laid on the works of saints connected with the temple.

(v) The Committee should set apart a portion of the surplus for donation to charitable institution like Orphanage or amelioration of the conditions of the infirm and helpless people.

(7) Augmenting Resources

The Commission feels, as already observed in this Report, that imposition of an administration is sure to attract offerings and donations from the public so that the income will be several times the amount shown now. However the committee can consider the following without violating the sentiments of the devotees for augmenting income :-

(i) In the paragraph of pujas it is already suggested that the committee should consider the desirability of drawing lots for the right of officiating as Yajman at the Sarkari pujas from out of those who purchase the tickets. While this can be tried at the Ashadhij and Kartiki waris on all other days, devotees may be invited to offer to meet the cost of the daily pujas and upchars which regularly take place, in return for acknowledgement of the gift or offering on the public Notice Board that particular puja or upchar of that day has been performed at the cost of a particular individual and a special prayer at the close of the puja or upchar before the deity for the well being of the donor, allowing the said donor to remain present at that time and giving him some prasad.

(ii) The municipality of Pandharpur has been charging pilgrim tax of 60 paise per head and a number of pilgrims have strongly objected to this tax on the ground that the devotees as a class do not get adequate return for the same. The Commission had called for the figures of receipts and expenditure from the municipality of the pilgrim tax and has noted that 33 per cent of the amount of the tax collected is debited by way of collection charges paid to all the municipal servants and other temporary staff employed at that time. The average of the total collection of the taxes during the last three financial years ending 1968-69 is Rs.3,64,553 (vide Ex. 695). The Commission feels that the municipality should be persuaded to pay a certain percentage to the Committee for development of surroundings of the temple from inside.

(iii) In the paragraph of offerings it is already suggested to open a store to sell the prasad and this would also yield a good income even if the percentage of profit is kept low.

(iv) After the imposition of Administration it can take steps to collect donations from devotees for its various activities and developments by starting separate funds for

such activities and by passing receipts; e.g. funds can be started for the purpose of starting the institution for imparting religious instruction, building up a library, Dharmashalas, poor feeding, help to helpless, Renovation of the temple etc. If the administration creates confidence of clean and impartial management there would be no difficulty for donations to come for these purposes.

(8) Budget, Accounts and Audit

(i) At present the B.P.T. Act, 1950 does not make it incumbent on the trusts to prepare a budget. However preparation of budget and sanction thereof is essential and as such in the Draft Act provision has been made in this behalf.

(ii) It is needless to say that accounts should be maintained so as to facilitate the audit and proper reflection of the affairs of the administration and as such the same should be maintained as prescribed by the B.P.T. Act and further directed by the Charity Commissioner.

(iii) Under the B.P.T. Act the power of appointing auditors vests in the trustees. However, the Commission feels that the appointment of auditors should not remain with the Administration and should exercised by some independent authority and Charity Commissioner would be the most appropriate for this purpose as he has to exercise the supervising power on the administration.

(9) Inclusion of other connected trusts under the Administration and co-operation of the public and devotees

(i) It has already been made clear in the earlier portions of this Report that apart from the four trusts in respect of which this enquiry is ordered there are many other trusts and endowments connected with these temples or connected with the pilgrimage or Pandharpur. Steps are necessary to extend the proposed Act to all such trusts and endowments so as to include them under the Administration proposed. A list of such of them forms part of the Appendix.

(ii) It is needless to say that the Commission does not

expect an overnight change in the conditions prevailing at Pandharpur even though Administration is imposed on the lines proposed. Success of the administration would entirely depend on the working of the administration and the co-operation of the public and devotees to the administration in its endeavour to give a clean administration and effect development. For this purpose the Administration will have to seek co-operation at different levels and on different aspects and in this behalf the Administration will have to appoint so many committees to advise the administration or to carry out different plans of development. The Commission feels that many devoted and selfless persons are likely to come forward to help the administration and it will depend on the skill of the Administration to utilise all such help. With this view the Administration proposed is empowered to form advisory committees or committees or carrying out certain schemes of development.

(10) Other General Aspects

(i) Steps should be taken to remove beggars from ghats and the vicinity of the temple and preventing infestation of those places by beggars and the afflicted.

(ii) To ensure order in the premises it may be necessary to empower the Administrative Officer with powers of an Executive Magistrate. Such powers vest in the Administrator of Puri and Secretary at Badrinath.

(iii) The necessity of obtaining police permission for Mahapujas even on the grounds of maintaining order be stopped.

(iv) The ventilation and sanitary conditions inside the temple are far from satisfactory. Immediate steps in this behalf are necessary to keep the premises clean."

8. The recommendations and suggestions of the Commission were placed before the Legislature of the State. On the basis of views expressed by the Legislature of the State on the said Report,

the Government of Maharashtra thought it imperative to take certain measures not only for abolition of all the hereditary rights and privileges of *Badves, Utpats*, any Committee or any person managing the affairs of the temples and the property thereof or any endowment or registered trusts in relation thereto, but to require them to hand over the possession of such property to the Committee to be established for that purpose and also for the purpose of better management, administration and governance of such temples, property or endowment or registered trust; and to abolish all the hereditary rights of the *Badves, Utpats, Sevadharis, Kolis* and others of performing *nitya* or daily or *naimittik* or occasional pujas in the temple and for appropriating the income accruing from offerings, Dakshinas, donations or gifts made to the idols or deities in the Temples or made for the purpose of development of the Temples or any property thereof with a view to its utilization for purposes of the Temples, of the idols or deities therein or any property thereof; and to provide for the acquisition and vesting of such rights and privileges in the Committee aforesaid and for the payment of amounts for the acquisition of

such rights and privileges; to provide for better administration and governance of subject temples, their endowments and the amalgamation of the trusts; and to provide for matters connected therewith. The Legislature of the State accordingly passed enactment being Maharashtra Act No.IX of 1974 called as The Pandharpur Temples Act, 1973 (hereinafter referred to as `the Act'). The said Act has been assented to by the President of India on April 3, 1974.

9. The preamble of the Act declares that the Act is to provide for the abolition of all the hereditary rights, privileges of ministrants and priestly classes functioning in the temples of Vitthal and Rukmini at Pandharpur; for the acquisition of such rights and privileges and for the vesting thereof in a Committee established for

the purpose; for payment of amounts for such acquisitions for providing for better administration and governance of these temples, their endowments and the amalgamation of the trusts, and for the matters connected with the purpose aforesaid. We

shall advert to the relevant provisions of the said Act a little later.

10. Suffice it to observe that the three priestly classes challenged the said Act by way of Writ Petitions under Article 32 of the Constitution of India (hereinafter referred to as `the Constitution') before the Supreme Court of India being Writ Petition Nos.218, 224, 225, 228 and 229 of 1974. During the pendency of the said Writ Petitions, ex-parte injunction was granted restraining the State of Maharashtra from enforcing provisions of the said Act except Sections 1, 2, 21 to 31, 33, 34 and 39. The said Writ Petitions, however, came to be disposed of by Constitution Bench (Five Judges) of the Apex Court on March 10, 1976 when following order came to be passed:

> "These Writ Petitions involve disputed questions of fact. We therefore allow the Writ Petitions to be withdrawn and grant liberty to the Petitioners to file a Suit. We, however, direct the State to maintain status-quo as on today for a period of 100 days from today and not to take any action under the Pandharpur Temples Act of 1973. Petitioners would also maintain status-quo as on today for a period of 100 days from today.
>
> Each party to pay and bear its own cost."

11. As per the liberty granted by the Supreme Court, the Appellants proceeded to file nine separate Suits before the Court of Civil Judge, Senior Division, Solapur. Primarily, the Appellants challenged the enactment on the touchstone of rights guaranteed under Articles 25 and 26 of the Constitution. The Appellants would assert that being religious denomination, the provisions of the Act, in particular, Section 4 infringes their right guaranteed under Article 26 of the Constitution of India. The challenge by *Sevadharis* and *Utpats* is essentially to Section 4 of the Act whereby the specified rights and privileges have been abolished, stood acquired and vested in the Committee. They have also claimed that the provisions of Section 6 read with Schedule `D' with regard to payment of compensation for such abolition and acquisition of their rights were ultravires. Insofar as *Badves* are concerned, they have additionally referred to other provisions of the Act, which according to them were ultravires. I shall advert to those aspects at the appropriate place.

12. The State contested the claim of the Appellants by filing detailed written statements in each of the Suits. On the basis of rival pleadings, the Trial Court framed issues in each of the Suits separately. Both sides produced documentary as well as oral evidence. On analysing the evidence on record, the Trial Court answered the material issues against the Plaintiffs. The Trial Court has negatived the challenge to the provisions of the Act being repugnant to Articles 14, 19(1) (c), 19(1)(f), 19(1)(g), 31 or for that matter, Articles 25 and 26 of the Constitution. Consistent with the said findings, the Trial Court by common Judgment dismissed the Suits preferred by the Appellants. The Appellants accordingly carried the matter by filing separate Appeals before the District Court at Solapur. By the impugned Judgments and decrees, the Appellate Court dismissed the Appeals preferred by the Appellants and upheld the conclusion reached by the Trial Court on the material issues against the Appellants. Here it may be mentioned that the Appellate Court decided the claim of *Badves, Sevadharis* and *Utpats* separately by three different Judgments. Accordingly, the Appellants have brought the matter before this Court by way of

separate Second Appeals.

13. The Appeals came to be admitted by the learned Single Judge of this Court as back as in 1985 with reference to questions (a) to (d) being substantial questions of law. The same read thus :

> "(a) Whether the Pandharpur Temples Act, 1973 is unconstitutional, null and void in view of the provisions contained in Articles 14, 19, 25, 26 and 31 of the Constitution?
>
> (b) Whether the lower Courts were right in making a reference to the Hon'ble High Court under Section 113 of the Code of Civil Procedure read with Article 228 of the Constitution of India?
>
> (c) Whether the State Legislature had the legislative competence to pass the impugned Act to abolish the hereditary rights and privileges of the Plaintiffs in view of the fundamental rights guaranteed by the Constitution under Articles 14, 19, 25, 26 and 31?
>
> (d) Whether the evidence produced on record constitutes "religious denomination"?"

14. These questions have been formulated in the Appeal filed by *Badves* being Second Appeal No.46 of 1985. Insofar as the separate Appeals filed by *Sevadharis and Utpats,* no specific question being substantial question of law has been formulated while admitting the respective appeals. The Court merely admitted

the respective appeals and ordered the same to be placed for hearing along with the leading Appeal of *Badves*. In that sense, the substantial questions of law on which the Appeal of *Badves* came to be admitted can be allowed to be raised by *Sevadharis and Utpats* in their respective Appeals.

15. However, at the hearing of the Appeals, no argument was advanced on behalf of any of the Appellants on the question of legislative competence of the State Legislature as such. The arguments canvassed on behalf of *Badves, Sevadharis and Utpats*, revolved around the question that the provisions of the enactment violate the fundamental rights of the Appellants under Articles 25 and 26 of the Constitution being religious denomination. Indeed, the Counsel appearing for the Appellants advanced argument that the Act was violative of rights guaranteed under Article 19(1)(f), 19(5) and 31 of the Constitution.

16. Notably, question No.(b) was not pursued by Counsel

appearing for parties which relates to obligation of the lower Court to make reference under Section 113 of the Code of Civil Procedure, 1908 (hereinafter referred to as `C.P.C.') read with Article 228 of the Constitution. Indeed, this question was specifically contested before the lower Court. The Trial Court has answered the same against the Appellants and found that it was not obligatory to make reference under Section 113 of C.P.C. in the fact situation of the present case, for reasons recorded in its Judgment. The said view of the Trial Court has been affirmed by the Appellate Court. The proviso to Section 113 of C.P.C. enjoins that the Court should be satisfied that the case pending before it not only involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, but should also be of the opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court. To put it differently, it is only when the subordinate Court was to form prima facie opinion about the invalidity or inoperativeness of the impugned Act, Ordinance,

Regulation or provision and at the same time, there is no declaration to that effect by the High Court or Supreme Court at the relevant time, the question of making reference under Section 113 of C.P.C. will arise. In the present case, the Trial Court was never of the opinion that any of the provision or Act as a whole was invalid or inoperative. Moreover, the parties were relegated before the Civil Court in terms of the order passed by the Apex Court and not by choice. In any case, as the matter has now come up before this Court, the said grievance would recede into the background. For that reason, perhaps, the Appellants advisedly did not make any oral arguments on the said issue. However, an attempt has been made in the written submissions to advert to the said contention. Just because reference has been made in the written submission to this contention, it may not be necessary for this Court to burden the Judgment with the said submission. In that sense, only two principal questions as formulated on which the Appeals have been admitted were put in issue namely; questions (a) and (d). There are derivative issues which would arise for consideration alongwith substantial questions of law (a) and (d)

referred to above, having regard to the arguments advanced by both sides, which are are also answered in this Judgment .

17. It is relevant to note that one Shri Bheemacharya Balachharya Varakhedakar has intervened in these Appeals. He was allowed to place his submissions in writing, which he has done in time. His submission relevant to decide the questions formulated for consideration of this Court have been taken into account and considered together with the submission of the Counsel appearing for the parties. The Appeal filed by *Badves* was argued by Shri B.P.Apte, Senior Counsel i/b Shri.S.M.Mhamane & Shri S.S.Patwardhan. The Appeal preferred by *Sevadharis* was argued by Shri Vinit B.Naik and the Appeal preferred by *Utpats* was argued by Shri A.K.Abhyankar, Senior Counsel i/b Shri R.S.Patil. Shri A.Y.Sakhare, Sr.Counsel i/b Shri S.G.Surana argued on behalf of the Respondent Committee and Shri Shekhar Naphade, Special Sr.Counsel i/b Smt.G.P.Mulekar, A.G.P. represented the Respondent State. As constitutional validity of the State Enactment was put in issue, notice was given

to the Advocate General, who in turn, was represented by Shri A.R.Patil. He adopted the arguments canvassed by Shri Naphade and Shri Sakhare for the Respondents. With a view to complete the narration, it may be noted that when these Appeals were placed for hearing before me, a doubt was expressed to the Counsel appearing for the parties as to whether it was necessary to place the matter for hearing before the Division Bench as the issue of constitutional validity of the enactment was put in issue. To that, all the Counsel submitted that it was not necessary to do so. For, there is no provision in the High Court Appellate Side Rules which would oblige the issue to be heard and decided only by the Division Bench. Accordingly, with the consent of all parties hearing of these appeals proceeded before me.

18. Before we proceed to examine the challenge to the provisions of the Act on the touchstone of provisions of Constitution, it is apposite to recapitulate the historical background about the origin of the temples and idols. The Commission's Report (*Exhibit 145*) records that the place as well as the temples being

ancient, there was no evidence to pin point the date of establishment of the temples. It mentions that the oldest piece of evidence about Pandharpur though not about the date of the temple, is provided by an inscription found in Kolhapur and published in the Annual Report of the Mysore Archaeological Department. That inscription appears to have been carved during the rule of *Avideya*, a King belonging to *Rashtrakuta dynasty*, which was founded by *Prasana*. The report refers to other materials referable to different periods which shows the existence of Pandharpur. In Para 7 of Chapter III of the Report, it is mentioned that prior to 12th century, no evidence is forthcoming showing the existence of the temple of *Vithoba* in Pandharpur though reference to the place Pandharpur can be identified. The Commission on the basis of material before it has inferred that there was strong probability that *Vitthal* deity was in Pandharpur in 10th or the 11th century A.D. It is then observed that there was positive evidence to show that in the 13th Century, if not during the latter part of the 12th Century, there was a temple at Pandharpur venerated and visited by the people around. The direct reference to the existence of the

temple is found in the inscriptions on the three sides of the stone beam resting on the pillars of *Solekhambi* (hall of 16 pillars) in the present temple. The other testimony is of the inscription of 1248 A.D. found in front of *Shri Jambukeshwar Temple* at *Hebball* near *Dharwar*, which mentions that *Kaluwar Singagavda* has given a *vritti* for charity (benefit) of the *Wari* of *Shri Vitthaldeo* of *Pandarange*. This inscription shows that *Waries* at *Ekadashi* time or visits of pilgrims in groups to Pandharpur were in vogue prior to that. Reference is made to other materials in Paragraph 9 onwards in the Report. On the basis of which, conclusion is reached by the Commission that by the end of 13th Century, the *Warkari Panth* had taken shape attracting large number of pilgrims regularly to Pandharpur whose fame had spread far and wide. The Commission then proceeds to record that although the material referred to by it earlier indicates existence of temple in Pandharpur but no reference is found to the existence of any of the three priestly classes - *Badves, Utpats, Sevadharis* or any connection of theirs with the temples.

19. In Para 13 of the same Chapter, the Commission records that none of the inscription referred by it earlier, mentioned *Rukmini or the Rukmini Temple* nor had any grants or endowments made to *Vithoba or Vitthal* any reference to *Rukmini.* The Gazetteer mentions that originally the temple of *Rukmini* consisted only of a shrine and ante-chamber whose work could be of a date after the 16th century, though *Vithoba* temple has features and evidence of its construction before the 16th century. It is also noted that the size, appearance and even stones from the idols of *Vithoba and Rukmini* are carved, are not similar. The Commission was conscious of the fact that *Rukmini*' *s*image had suffered damage and new one was installed. Commission has noted that even so, in view of the absence of any reference to *Rukmini* temple or idol in any of the ancient inscription till the end of 13th century, an inference is possible that the *Rukmini* temple and the idol were of subsequent origin. The Commission also considered the fact that *Rukmini* being the consort of Vithoba, if the two deities were installed simultaneously, there was no probability of the priests and attendants of the two temples being entirely different with different

types of claims and rights, as between *Badves and Utpats*. The Commission has noted that the origin of Vithoba temple is capable of being traced prior to 11th or 12th century and that of *Rukmini* temple is traceable not earlier than 16th century. It has found that the origin of the temples is lost in antiquity. The Appellants have not produced any positive evidence before the Court to dispel the conclusions so recorded by the Commission.

20. With regard to the persons associated with the temples, the Commission has noted that the association of *Badves, Utpats and Sevadharis* with the temple is not from the date of establishment of the temple but much later. By 13th Century, the *Warkari Panth* had taken shape, attracting large number of pilgrims regularly to Pandharpur whose fame had spread far and wide. The three priestly classes *Badves, Utpats* and *Sevadharis* had no concern with the spreading of fame of Pandharpur or of shaping of *Warkari Panth*. The *Warkari Panth* is a branch of the devotees of *Vithoba*. However, all devotees of *Vithoba* are not necessarily *Warkaries*. *Warkari* means those who perform *Wari* (regular visit) to

Pandharpur which is one of the tenets of *Warkari Panth*. *Warkaries* are proponents of *Bhakti Marg* which is common to all schools of philosophy. The original practices imperative for the *Warkaries* were a visit to Pandharpur and devotion to *Vithoba*. With passage of time, the tenets evolved as per the teachings of *Sant Gnyaneshwar* who was instrumental in organizing the *Warkari Panth* as explained by Mr.Bahirat, as noted in Paragraph 8 of Chapter IV of the Report as follows :

> "..... Warkari means those who perform wari and wari means a regular visit to Pandharpur. In fact the warkari panth prescribed a few simple rules of conduct as comprising the Bhakti-marg propagated by Bhagwat Dharma. Those simple tenets, as explained by Mr.Bahirat, are :-
>
> (1) A warkari is one who visits Pandharpur regularly at least once in a year.
>
> (2) He should wear a garland of Tulsi beads which is a sign of dedication of his life to Shri Vitthal.
>
> (3) He should always remember the name of God, should read some verses of Dnyaneshwari after bathing and recite Haripath every evening. He should observe the fast of Ekadeshi seeking the company of saints.
>
> (4) He should speak the truth, regard all women except his wife as his mother and sisters. His feeling of devotion should be sincere and not mere outward affection.
>
> (5) He should be humble and kind to all. But should be adamant when his ideal principles are at stake.

> (6) He should regard sacred places like Alandi, Dehu, Paithan equally holy like Pandhari as these are associated with the names of great warkaries saints like Dnyandeo, Tukaram, and Eknath.
>
> It may be pointed out that the original practices imperative for the warkaries were a visit to Pandharpur and devotion to Vithoba. The other directions now included in the code of conduct happened to be incorporated when saint Dnyaneshwar organised the warkari panth which were followed by the other saints."

21. Para 9 of Chapter IV of the Commission's Report refers to the simple tenets preached by the *Bhagvad Dharma* which consist of prayers with sole object of God realisation without the devotee forsaking his duties and obligations, flowing from his position in life. This essence is preached in the 12th Chapter of *Bhagvad-Geeta*. This principle was propagated by *Warkari Panth* which attracted devotees swelling the number of *Warkari* from time to time around *Vithoba*. The *Bhaktimarg* or *Bhagvad Sampradaya* had caught the imagination even in other parts of India as the school of thought that followed and succeeded the *adwait* school of Shri Shankaracharya. The different panths subscribed to the philosophy of *Bhaktimarg*, which is the tenet of *Warkari Panth*. The

Commission in Para 12 of the same Chapter records that Warkari Panth did not distinguish between sex, caste and the community. Amongst the saints, who were Warkaries, Sant Gnyanadeva was an excommunicated Brahmin, Namdeva was a tailor, Gora a potter, Samvata was a Mali (gardener), Narahari a goldsmith, Chokha a Mahar (Scheduled Caste) and Tukaram a Sudra (Scheduled Caste). Even women were among the Warkaries such as Muktabai the sister of Sant Gnyanadeo, who was herself a spiritual teacher of Changdeo; Janabai who calls herself the maid servant of Namdeo; Kanhopatra a dancing girl and Bahinabai the wife of a Brahmin, who was the disciple of Tukaram, a Sudra. There was material before the Commission to indicate that *Vithoba* whose form is identical with the form of *Vishnu, Govinda or Krishna* is held in devotion and reverence even by Muslims. Reference is made to Muslim saint Shaikh Mahamad and also Kabir, a Muslim. Commission has also referred to material which indicates that Narsi Mehta the famous saint of Gujarat has been referred to in *Tukaram's Abhangas*. The Commission has concluded that (1) the cult of *Vithoba* which preaches *Bhaktimarg* or the path of devotion,

irrespective of religion, caste, creed and sex is one meant for all to follow if they choose, (2) that the temple has no special tenets or cult meant for any particular group or a section but for the public as a whole, and (3) while there is no evidence about its establishment by either an individual or a group, circumstances show that the origin and the growth was spontaneous.

22. As mentioned earlier, the enactment in question was passed by the State Legislature which primarily considered the Commission's Report and related materials. We shall now briefly refer to the scheme of this legislation. The statement of objects and reasons mentions that the Government had received many complaints regarding the mismanagement of the *Vithoba* and *Rukmini* Temples at Pandharpur and certain members connected therewith and in particular, the rapacity of the *Badves, Utpats* and others and continued harassment of the worshiping public. Consequent thereto, the Government appointed a Commission of Enquiry in October 1968 under the Commissions of Enquiry Act, 1952. The Commission submitted its Report in February 1970. It is

further mentioned that the Government thereafter formulated its proposals and decided that legislation should be undertaken only after the report was duly discussed in the House (Assembly). It is noted that the report of the Commission was discussed in the previous monsoon session of the Legislature. The consensus of the two Houses of Legislature was that the hereditary rights of *Badves, Utpats* and others performing *pujas* in the temples and of appropriating the income accruing from offerings, *Dakshinas,* donations or gifts from the devotees or pilgrims and the right of management of the temples should be abolished. It is then noted that accordingly it has been decided that all these rights should be abolished and acquired and provision should be made for payment of amounts for acquisition of those rights. In this backdrop, the Legislation in question came to be passed by the State Legislature.

23. We have already adverted to the preamble in the earlier part of this Judgment. Section 1 of the Act gives the short title and commencement of the Act. Sub-section (2) thereof provides that the Act shall come into force on such date as the State

Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act. Sections 1, 2, 21 to 31, 33, 34, 38 and 39 came into force on 3rd July 1975. The remaining provisions have come into force with effect from 22nd February 1985. Section 2 is definition of some of the expressions, which includes the definition of three priestly classes. Section 3 provides that if any question relating to specified issues arises, the authorised officer shall, after giving the party an opportunity of being heard and after holding an inquiry, decide the question. That decision can be challenged by way of an appeal to the Charity Commissioner by the aggrieved person. The decision of the authorised officer subject to an appeal under sub-section (2), shall be final and conclusive, and shall not be questioned in any suit or proceeding in any court. Section 4 of the Act which is the bone of contention in the present proceedings deals with abolition of rights of three priestly classes associated with the temples. Clause (a) of sub-section (1) thereof pertains to the specified hereditary rights and privileges of *Badves, Utpats* or any Committee or of any person to mange the affairs of the

endowment and the registered trusts, including the hereditary right of *Badves* to be the chief priest, managers, guardians and overseers of the idol, Temples and property thereof. Clause (b) of Sub-section (1) deals with the specified hereditary rights and privileges of *Badves, Utpats, Sevadharis, Kshetropadhyes, Kolis* and others to receive, demand and appropriate the income from the offerings made to any deity in the Temples including their respective *Parivar Devatas*, income from the pujas performed for or on behalf of *yajmans* (i.e. the devotees or pilgrims), income from the right of applying *gandh* or giving prasad to *yajmans*, income from any share in the amount received from the *yajmans* by any committee or *Sevadharis,* income from *pujas, upchars* and the like or *dakshinas* demanded or income derived from any source in or in relation to the Temples or use thereof. Clause (c) deals with the specified hereditary rights and privileges of *Badves, Utpats, Sevadharis, Kshetropadhyes, Kolis* and others to perform *nitya* or daily or *naimittik* or occasional sevas or services to the the deities on behalf of *yajmans* or pilgrims in any of the Temples, which they were performing immediately before the appointed date. The

specified rights and privileges in terms of sub-section (1) of Section 4 of the Act have been abolished and thereupon all those hereditary rights and privileges, subject to the provisions of this Act, have been deemed to be acquired and vested in the Committee. Sub-section (2) of Section 4 provides for cessation of the powers, duties, rights and privileges, if any, in relation to the endowment and the registered trusts, enjoyed by the Committee or Devasthan Committee formed under Rule V of the rules for the management of the property of the idol Vitthal, approved by the High Court in *Sakharam Bhimaji Benare and others vs. Gangaram Babaji Badve and others* in Appeal No.141 and connected matters, the *Samastha Badve Mandal, the Samastha Badve Samaj, the Utpat Committee,* if any, or any other body by whatever name called, functioning in relation to the endowment or registered trusts immediately before the appointed day. Section 5 provides for consequences of abolition of rights and privileges on account of Section 4. Clause (a) of Sub-section (1) of Section 5 provides that the endowment and the registered trust, and the superintendence, direction and control thereof (including their administration,

management and governance) shall stand transferred to, and vest in, the Committee under this Act. It further provides that the Committee shall be the trustee of such endowment and trusts; who shall take over all properties and hand over the same to the officer in charge of the Sub-Treasury at Pandharpur within forty-eight hours of the appointed day together with a full inventory thereof. Clause (b) of sub-section (1) prohibits the *Badves, Sevadharis, Utpats, Kolis* and others from exercising or performing the hereditary rights and privileges in relation to the endowment or registered trusts; and in no case, shall they demand, solicit or ask for or receive or accept any remuneration either in cash or in kind or in the precincts of the Temples by way of dakshina or in any form whatsoever for exercising or performing any such hereditary rights and privileges. Clause (c) of sub-section (1) obligates the Committee to ensure the continuance of the *nitya* or daily services in the Temples without any break or hindrance or without in any way curtailing the form, dignity, grandeur or manner of seva or service which was being performed in relation to any deity immediately before the appointed day. It is also obligatory for the

Committee to take particular care to ensure that, as far as possible, darshan of the deities is available to the devotees; and for those purposes, the Committee may appoint such person, on payment of such remuneration, and subject to such terms and conditions as the Committee may, in the interest of the better management of the Temples may determine. Clause (d) of sub-section (1) provides that all suits and legal proceedings in relation to any of the hereditary rights and privileges or in relation to the committees and bodies referred to in sub-section (2) of Section 4 pending in any Court or tribunal or before any authority shall abate, and no Court, Tribunal or Authority shall, (after the appointed day), entertain any such suits or legal proceedings. Sub-section (2) of Section 5 stipulates that if resistance or obstruction is offered to the Executive Officer while taking possession of the properties of the endowment and the registered trusts vested in the Committee, the specified Officer may make an application to the Magistrate having jurisdiction, complaining of such resistance or obstruction. The Magistrate, unless satisfied that the resistance or obstruction is occasioned by any person claiming in good faith to be in

possession on his own account or by virtue of some right independent of that of the endowment or registered trusts, may make an order that the specified officer be put into possession. Such order has been made final, subject to the result of any Suit which may be filed to establish the right to the possession of the property. It is further provided that the specified officer may make an application to the District Judge who shall treat the same as an application for delivery of possession under the C.P.C. and shall dispose it of in accordance with the provisions made thereunder. Sub-section (3) of Section 5 provides for bar to institute suit, prosecution or other legal proceeding against the specified officer or the Executive Officer or any person acting under his instruction or authorised by him for anything done or purported to be done in good faith under sub-section (2). The proviso to sub-section (3), however, enables filing of suit by any person aggrieved by an order made thereunder from establishing his title to the property. Sub-section (4) of Section 5 is a provision providing for penal consequences. It provides that if any person referred to in clause (b) of sub-section (1) exercises or attempts or causes to exercise

any of the hereditary rights and privileges, or if any person fails to hand over any property, in contravention of the provisions of sub-section (1), then without prejudice to the provisions of sub-section (2), he shall, on conviction, be punished with fine which may extend to two thousand rupees. Section 6 provides for payment of amounts for abolition of rights and privileges of the specified persons. Section 7 provides for remedy to concerned persons having interest, to apply in writing to the authorised officer within a period of ninety days from the appointed day, evidencing such share and the names of persons who are co-sharers. On receipt of such application, the authorised officer is expected to hold an inquiry and pass appropriate order regarding payment of amount to the concerned person. Sub-section (3) of Section 7 provides that the provisions of the Public Trust Act shall apply in relation to inquiries under this section as they apply to inquiries under that Act. Section 8 provides for remedy to person aggrieved to apply to authorised officer for payment of amount for abolition or acquisition of any of his hereditary rights and privileges, if already not provided to him as per the Act. Section 9 provides for remedy of reference

to District Court by any person having interest, who is aggrieved by order made under Section 7 or Section 8. Section 10 provides for information to be submitted by the authorised officer in writing to the District Court. Section 11 provides for the mode of service of notice by the District Court. Section 12 provides that the scope of the inquiry in such proceedings shall be restricted to a consideration of the interests of the persons affected by the objection. Section 13 provides that the proceedings shall be in open Court. Section 14 provides for the parameters to be kept in mind while determining payment of amount. Section 15 deals with forms of orders to be passed by the District Court. Section 16 deals with the cost of proceedings. Section 17 provides for remedy of appeal to the High Court against the decision of the District Court, as if such decision was a decree from which an appeal ordinarily lies. Section 18 provides for mode of payment by the authorised officer. Section 19 deals with investment of money deposited in the District Court under the provisions of this Act. Section 20 deals with the payment of interest . Chapter III of the Act deals with the Committee to be constituted under this Act.

Section 21 spells out the number of members to form the committee. Section 22 provides for disqualification of members. Section 23 deals with the power of the State Government to make appointments in specified category. Proviso to Section 23 specifies that no person, who is entitled to claim the amount under Section 6 or Section 8, shall be appointed on the Committee for a period of 15 years from the appointed day. Section 24 deals with the term of the office of the members appointed by the State Government. Section 25 deals with the resignation of members and Chairman. Section 26 deals with removal of members for misconduct and other matters. Section 27 provides for disqualification of a member during the term of his office. Section 28 deals with the manner of filling casual vacancies. Section 29 is a provision for remuneration of members of the Committee. Section 30 provides for the place of office and the meetings of the committee. Section 31 provides that no act or proceedings of the Committee or of any person acting as the Chairman or a member of the Committee shall be deemed to be invalid by reason only of the existence of a vacancy amongst its members or a defect in the

constitution thereof. Section 32 provides for the powers and duties of the Committee. Chapter IV of the Act deals with the Executive Officer and the establishment. Chapter V deals with budget and audit. Chapter VI deals with general provisions. Section 43 which is part of Chapter VI provides that there shall be constituted a fund which shall be called “The Pandharpur Temples Fund”. It is further provided that the said fund shall be vested in and managed by the Committee. The components of that fund is specified in Section 43. Section 44 deals with how the Temples Fund shall be utilised. Specific purposes are spelt out for utilisation of the fund. Sub-section (2) of Section 44 authorises the committee to utilise the Temples Fund for all or any of specified matters. Section 45 deals with powers of the State Government to give directions, call for report, documents, and other matters. Section 46 authorises the State Government to depute any person to carry out inspection of any movable or immovable property, records, correspondence, plans, accounts and other document relating to the endowment and registered trusts; and the Committee and its officers and servants shall be bound to afford all facilities to such person for

such inspection. Section 47 authorises the State Government to call for and examine the record of the Executive Officer or of the Committee with regard to any proceeding. Section 48 provides that the Public officers shall furnish copies or extracts from certain documents. Section 49 requires the Committee to prepare annual report and submit the same to the State Government through the Charity Commissioner. Section 50 specifies that officers, servants and employees of the Committee and members thereof shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Section 51 is a provision regarding bar to suit or proceeding against the State Government or against the Committee or any member thereof or the Executive Officer or any other officer or employee of the Committee for anything in good faith done or purported to be done by any of them under the provisions of the Act. Section 52 is an overriding provision, which specifies that the Act shall have effect notwithstanding anything to the contrary contained in any law for the time being in force or in any scheme of management of the Temples framed before the appointed day or in any decree or order of any Court or any

practice, custom, usage, prevailing in relation to the endowment or registered trust. Section 53 authorises the State Government to dissolve or supersede the Committee in certain situations. Section 54 is a provision which enables the State Government to make rules for carrying into effect the purposes of the Act and the amendment by publication of such rules. Section 55 authorises the Committee to make by-laws on matters provided therein, which will have to be consistent with the Act or any rules

thereunder. Section 56 provides that save as expressly provided by or under this Act, the provisions of the Public Trusts Act shall apply in relation to the management and administration of the Temples, the properties of the endowment and registered trusts, Temples Fund and all matters ancillary or connected therewith. Section 57 provides that if any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion requires, by order do anything which appears to it to be necessary for the purpose of removing the difficulty. There are four schedules to the Act. Schedule A gives the description of daily or nitya

services in the temples of God Vitthal, Goddess Rukmini and other Devatas, which is referable to Section 2(g) which defines daily or nitya services. Schedule B refers to pujas performed by or on behalf of devotees in the Temples of God Vitthal and Goddess Rukmini, in the context of definition given under Section 2(t) of occasional or naimittik services. Schedule C specifies the registered trusts as defined in Section 2(za). Schedule D specifies the amount to be paid to concerned persons namely, *Badves, Sevadharis, Utpats* and *Kolis* in terms of Section 6(1) of the Act.

24. The *Badves* in the Suit filed by them have challenged different provisions of this enactment being unconstitutional. The principal challenge is to Section 4 of the Act being violative of Articles 25 and 26 of the Constitution. The *Badves* as is the case of other priestly classes, based their claim on the assertion of religious denomination. Although in Para 25 of the Plaint, it is asserted that Section 4(1) of the Act is unconstitutional as infringing fundamental rights guaranteed to *Badves, Utpats and Sevadharis* under Articles 14, 19(1)(f), 19(1)(g), 25, 26 and 31 of the

Constitution, however, in the preceding paragraph, the thrust of the challenge is founded on the claim of being religious denomination. It is their claim that *Badves* are from ancient times hereditary heads of the temples of God *Vithoba and Parivar Devatas*, Chief Priests, managers, overseers and guardians of the idol and the temple and of the property belonging thereto. They are the principal performers of the *Pujas* and masters of ceremonies at the temples and authoritative exponents of the cult of God *Vithoba*. They claim to have attended to vast multitudes of devotees in the performance of religious worship and functions. They claim that they are hereditarily in vahivat of religious and temporal affairs of the *Parivar Devatas*. They have personal and beneficial interests in the property and income offered before the deities and in the presents and payments made by the *Yajmans* in return of services rendered by them , which is their main source of livelihood and which always constituted their property and which is sanctioned by custom, usage, ruling authorities as well as by court decisions. It is asserted that they have genuine legal proprietary rights which is a right to property within the meaning of Article 19(1)(f) of the

Constitution. In Para 27 of the Plaint, it is asserted that *Badveship* is *vritti* i.e. Occupation. That for generations, the occupation of the *Badves* has been that of religious services at the temple of God *Vithoba and Parivar Devatas* by themselves and on or for behalf of *Yajmans*. It is stated that *Badveship* is the principal, if not the sole source of livelihood of the *Badves*. It is asserted that Section 4(1) of the Act has the effect of wholly and unreasonably denying the *Badves* of their fundamental right to practice an occupation which is pursued by Badves since time immemorial, as a consequence, depriving them of their primary source of livelihood. That would result in violation of Article 19(1)(g) of the Constitution.

25. In Para 35 of the Plaint, provisions of Section 6 of the Act are challenged being without any basis and violative of Article 19(1)(f) and 31 of the Constitution. In Para 38 of the Plaint, provisions of Section 5(1) of the Act are assailed, being interference with rights of religious denomination guaranteed under Article 26 of the Constitution. In Paragraph 39, provisions of Section 55 of the Act are challenged. The provisions of Section 44

of the Act are challenged as restricting the right of every devotee to obtain *padasparsha purwak darshan*, being violative of Article 25 of the Constitution. In the latter paragraphs, provisions of Sections 6, 7, 8, 20, 21, 23, 32, 39, 44, 45 and 55 of the Act are challenged. In Para 60 of the Plaint, the *Badves* have summed up their challenge to different provisions of the Act referred to therein.

26. In the Suit filed by *Sevadharis and Utpats*, the thrust of the challenge is to the provisions of Section 4 of the Act, being violative of Articles 25 and 26 of the Constitution. In the body of the Plaint, at one place the respective Plaintiffs have indicated the different provisions which they intend to challenge being unconstitutional.

27. Insofar as *Badves* are concerned, general declaration was prayed to the effect that *Badves* of Pandharpur constitute religious denomination and in consequence thereof, the impugned Act was unconstitutional, null, void and inoperative. The next declaration sought was that the hereditary rights and privileges of

Badves referred to in Section 4(1) of the Act continued to subsist in them. Further declaration was sought that Defendant No.2 Committee stands abolished and any action taken by it was ultravires and not binding on the *Badves/*Plaintiffs. Besides, permanent injunction was claimed against the Defendant Nos. 1 and 2 restraining them from enforcing any of the provisions of the Act and from interfering with the hereditary rights and privileges of the Plaintiffs.

28. Whereas, in the Suit preferred by *Sevadharis*, declaration was sought that the rights enjoyed by the *Pujaris* along with other *Sevadharis* of Pandharpur Vitthal Temple are of religious nature and they form a religious denomination and that the Act was null, void, ultravires, as it violates the rights guaranteed under Articles 14, 19(1)(f), 19(1)(g). 25, 26 and 31 of the Constitution. The *Sevadharis* asked for further relief of injunction restraining the Defendants from giving effect to the provisions of the impugned Act.

29. The *Utpats* also prayed for declaration that their rights, privileges and duties together form religious denomination and the Act was null, void and ultravires and unconstitutional being violative of fundamental rights guaranteed to *Utpats* of Pandharpur, as it violates Articles 14, 19(1)(f), 19(1)(g), 25 and 31 of the Constitution. As a consequential prayer, they also asked for perpetual injunction against the Defendants from giving effect to the provisions of the impugned Act.

30. Notwithstanding the challenge put forth by all the three priestly classes in their respective Suits to the provisions of the Act on the touchstone of Articles 14, 19(1)(c), 19(1)(f), 19(1)(g) and Article 31, which challenge has been negatived by the two Courts below, at the hearing of the present Second Appeals, it is only the *Badves* who had argued on the validity of the provisions of the Act on the touchstone of Articles 19(1)(f) and 19(1)(g) and 31 of the Constitution. No oral argument was canvassed as to how the entire Act or any provision thereof was violative of Article 14 or Article 19(1)(c) of the Constitution. However, pursuant to the

liberty granted to file written submissions, in the written submissions filed on behalf of Appellants, challenge to the provisions of the Act even on the touchstone of Articles 14 and 19 (1)(c) of the Constitution is also found.

31. We have already noted that the Appeals have been admitted on questions (a) to (d) being substantial questions of law. Question (a) is wide enough to enable the Appellants to attack the impugned Act as a whole or specific provision with reference to Articles 14 and 19(1)(c) of the Constitution as well. Although it is not necessary for this Court to burden the Judgment with regard to challenge under Articles 14 and 19(1)(c), as no oral argument was

canvassed at the hearing of the Appeals, even then, I will deal with those aspects in the present Judgment, while adverting to the averments in the suit filed by *Badves* in that regard**.**

Re : Article 14 :

32. Insofar as challenge founded on Article 14 of the Constitution is concerned, the reference thereto can be found in Paragraphs 36, 47, 50, 57 to 59 of the Plaint. In Para 36, it is stated that the provisions of Section 4(1) are also hit by Article 14 of the Constitution, inasmuch as the said provisions single out the *Badves* and other priestly classes of Pandharpur Temples arbitrarily for abolition of their traditional rights and privileges. It is then stated that if any complaint of mismanagement has been made, the same cannot be adequate reason for total abolition of the hereditary rights and privileges, ignoring the possibility of providing for proper management by invoking powers under the provisions of the B.P.T.

Act as is done in case of some other temples accused of mismanagement. It is then stated that there are no special circumstances to single out the temples of *Vithoba* and *Rukmini* and their *Parivar Devatas* for unjust discriminatory treatment. The remedy provided is worse than the supposed disease. In Paragraph 47 of the Plaint, it is asserted that proviso to Section 23 (1) of the Act bars persons entitled to claim the amount under

Section 6 or Section 8 of the Act from appointment on the Committee for a long period of 15 years, thereby precluding arbitrarily and unreasonably *Badves, Utpats and Sevadharis*, who are the citizens of India and are devotees of God *Vithoba* and Goddess *Rukmini* from appointment on the Committee. It is stated that the embargo, apart from being arbitrary, unreasonable, capricious and discriminatory, in violation of Article 14 of the Constitution, deprives the *Badves* and others of their right to administer the affairs of the temples provided for in clause (d) of Article 26 of the Constitution. In Paragraph 50 of the Plaint, it is stated that Section 32 vests in the Committee uncontrolled powers without laying down any guidelines for exercise of these powers. Moreover, no appeal is provided against the action taken by them if any devotee is aggrieved. For these reasons, the said Section is obnoxious to Article 14 of the Constitution and is void. In Paragraph 57 of the Plaint, the *Badves* have highlighted that against the order passed by the appropriate Authority, the right of the aggrieved person to agitate on the question of the status in a Court of Law is taken away by making the decision of the Charity Commissioner final.

On the other hand, when such question arises in proceedings under the B.P.T. Act, recourse to a Court of Law is permitted. That there is no tangible reason why a different procedure should be prescribed in the Act which does not achieve the object of the Act. It is then asserted that the provisions of Section 8 of the Act are therefore unreasonable and unconstitutional. In Paragraph 58 of the Plaint, it is stated that under Section 32(1)(e) of the Act, the Committee is given power to inquire into and take steps to recover and take possession of the properties of the endowment but there is no provision for appeal to a Judicial Authority in the event of the Committee erroneously deciding that a property is the property of the endowment. Hence, the said provision is arbitrary, unreasonable and unconstitutional. In Paragraph 59 of the Plaint, it is stated that Section 39 of the Act enables the State Government to confer upon the Executive Officer the powers of a District Magistrate within the precincts of the temples and a distance within a radius of 1.6 kilometers therefrom such a provision is calculated to enable the Executive Officer to exercise powers under the Code of Criminal Procedure arbitrarily since the Executive Officer has

wide powers under the Act in his capacity as Executive Officer. Section 39 is therefore unreasonable.

33. Indeed, the State filed written statement and contested the above contentions, amongst others, on the ground that the averments in the Plaint to demonstrate infraction of Article 14 of the Constitution, were vague and unsubstantiated. The parties proceeded with the trial. The Trial Court, in Paragraph 103 of its decision, however, has unambiguously recorded that no arguments were advanced on behalf of Plaintiffs as regards challenge to Article 14 of the Constitution and it appears that they have given up the point. Nevertheless, the Appeal Court in Paragraphs 38 to 47 (in the case of *Badves*) has considered the challenge to the provisions of the impugned Act being violative of Article 14. The Appeal Court, in Paragraph 39 of the impugned Judgment has found that on careful scrutiny of the statements of the witnesses examined by the Plaintiffs, it is seen that they have not stated about the circumstances and conditions which are similar or alike in the other temples in comparison to temple at

Pandharpur. Similarly, none of them have stated that there are instances of mismanagement which are alike the temples of Pandharpur. The Appellate Court has also noted that person asserting violation of Article 14 of the Constitution, has to make out the case that he has been treated differently from others and without any reasonable

basis and the different treatment was unjustifiable. The Appellate Court has found that the Appellants have failed to make necessary averments and to prove that there was discrimination between the temples in Maharashtra which were similarly placed. The Appellate Court has made reference to the decisions of the Supreme Court on the point to answer the issue against the Appellants. For instance, we will straightaway turn to the leading decision in the case of **Tilkayat Shri Govindlalji Maharaj etc., v. State of Rajasthan & Ors. reported in AIR 1963 SC 1638** which is also known as `**Nathdwara Temple's Case**' . In Paragraph 54 of this decision, similar contention fell for consideration of the Apex Court. The same has been negatived in the following words:

> "(54) That takes us to the argument that the Act is invalid because it contravenes Article 14. In our opinion,

> there is no substance in this argument. We have referred to the historical background of the present legislation. At the time when Ordinance No.II of 1959 was issued, it had come to the knowledge of the Government of Rajasthan that valuables such as jeweleries, ornaments, gold and silver-ware and cash had been removed by the Tilkayat in the month of December, 1957, and as the successor of the State of Mewar, the State of Rajasthan had to exercise its rights of supervising the due administration of the properties of the temple. There is no doubt that the shrine at Nathdwara holds a unique position amongst the Hindu shrines in the State of Rajasthan and no temple can be regarded as comparable with it. Besides, the Tilkayat himself had entered into negotiations for the purpose of obtaining a proper scheme for the administration of the temple properties and for that purpose, a suit under Section 92 of the Code had in fact been filed. A Commission of Enquiry had to be appointed to investigate into the removal of the valuables. If the temple is a public temple and the legislature thought that it was essential to safeguard the interests of the temple by taking adequate legislative action in that behalf, it is difficult to appreciate how the Tilkayat can seriously contend that in passing the Act, the legislature has been guilty of unconstitutional discrimination. As has been held by this Court in the case of Shri Ram Krishna Dalmia v. Justice S.R.Tendolkar, 1959 SCR 279 at p.297 : (AIR 1958 SC 538 at pp. 547-548) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. Therefore, the plea raised under Article 14 fails." (emphasis supplied)

34. It is seen that in this decision, the established legal position that a law may be constitutional even though it relates to a single individual having regard to some special circumstances or reasons applicable to him and not to others, has been restated.

The criticism of the Appellants in the written submission filed before this Court is that uniqueness of the temple cannot be the sole basis to answer the grievance posed by the Appellants which necessarily relates to infraction of their personal right in particular that there was no discriminable reason for distinguishing the class of priest from others. It is also suggested that the Courts below have completely ignored the aspect of reasonableness of the provisions of the impugned legislation from consideration. Those grievances will have to be only stated to be rejected. Just because some averments are to be noticed in the Plaint as filed, which are referable to challenge under Article 14 of the Constitution, that by itself, may not be sufficient. In the first place, I have my own doubts whether it is open to the Appellants to agitate the issue of violation of Article 14 of the Constitution having failed to advance any arguments before the Trial Court as noted in Para 103 of the Judgment of the Trial Court. That fact has not been challenged at all. Be that as it may, the Appellate Court has found as of fact on analysing the material aspects that the circumstances and conditions to sustain the challenge under

Article 14 of the Constitution have not been spoken by the witnesses examined on behalf of the Plaintiffs. There is no challenge to the fact so recorded by the lower Courts. No oral argument was canvassed before me as to how the entire Act or for that matter any provision thereof, was hit by Article 14 of the Constitution. On this count alone, the grievance of the Appellants regarding infraction of Article 14 of the Constitution will have to be turned down. It will be useful to refer to the decision of the Apex Court reported in **AIR 1964 SC 1501 – *Raja Bira Kishore Deb v. State of Orissa.*** In Para 5 of this reported decision, the principle expounded in **Nathdwara Temple's case (supra)** has been restated. Even in the present case, it leaves no manner of doubt that Pandharpur Temples are public temples having unique characteristics in the State of Maharashtra and also of national importance and no other temple in the State is comparable with it; coupled with that it had become necessary to safeguard the interests of the temples its properties and endowment and the multitude of devotees and pilgrims so as to relieve them from the rapacity of the priestly classes of the Temples. The circumstances

were special circumstances applicable to the Pandharpur Temples. It is well established position that every Act carries with it the presumption of constitutionality and unless the Petitioner is able to discharge the said burden by placing adequate material, the Court should not strike down a legislative provision particularly by the application of Article 14 of the Constitution. My attention has been rightly invited by the Counsel appearing for the State to the decision of the Apex Court in the case of **S.P.Mittal v. Union of India & Ors. reported in (1983) 1 SCC 51,** with specific reference to exposition in Paragraphs 163 to 169 of the said decision. The grievance with regard to reasonableness of the provisions of the Act as also regarding non-existence of discriminable reason for discriminating the class of priests from others will have to be answered against the Appellants. It will be useful to reproduce Paragraphs 163 to 169 of this reported decision. The exposition therein applies on all fours to the case on hand, which read thus:

> "163. It was further contended by Mr. Venugopal that if the management of the institution had been taken over by the Government on the ground of mismanagement, there could be other institutions where similar situation might be prevailing. There should have been a general legislation rather than

singling out Sri Aurobindo Society for hostile treatment.

164. The argument cannot be accepted for two reasons. Firstly, because it has not been pointed out which were the other institutions where similar situations were prevailing. Besides, there is a uniqueness with this institution inasmuch as the Government is also involved. Even a single institution may be taken as a class. The situation prevailing in the Auroville had converted the dream of the Mother into a nightmare. There had arisen acute law and order situation in the Auroville, numerous cases were pending against various foreigners, the funds meant for the Auroville had been diverted towards other purposes and the atmosphere was getting out of hand. In the circumstances the Government intervened and promulgated the Ordinance and later on substituted it by the impugned enactment. It cannot be said that it is violative of Article 14 on that account. We get support for our view from the following decisions.

165. In *Budhan Choudhry v. State of Bihar* a Constitution Bench of seven Judges of this Court explained the true meaning and scope of Article 14 as follows :

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfiled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupation of the like. What is necessary is that there must be a nexus between the basis or classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 contemns discrimination not only by a substantive law but also by a law of procedure.

These observations were quoted with approval by this Court in *Ram Krishna Dalmia v. Justice S.R.Tendolkar*. In this case the Court further laid down :

(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds ;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

166. In *Ram Prasad Narayan Sahi V.State of Bihar* the Court of Wards had granted to the appellant a large area of land belonging to the Bettiah Raj which was then under the management of the Court of Wards, on the recommendation of the Board of Revenue, at half the usual rates. The Bihar legislature passed an Act called the Sathi Lands (Restoration) Act, 1950 which declared that, notwithstanding anything contained in any law for the time being in force the settlement granted to the appellants shall be null and void and that no

party to the settlement or his successors in interest shall be deemed to have acquired any right or incurred any liability thereunder, and empowered the Collector to eject the appellants if they refused to restore the lands. The appellants challenged the constitutionality of the Act under Article 226. This Court held: (SCR head-note)

The dispute between the appellants and the State was really a private dispute and a matter to be determined by a judicial tribunal in accordance with the law applicable to the case, and, as the Legislature had, in passing the impugned enactment singled out the appellants and deprived them of their right to have this dispute adjudicated upon by a duly constituted Court, the enactment contravened the provisions of Article 14 of the Constitution which guarantees to every citizen the equal protection of the laws, and was void.

Legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others and against which even the right of complaint is taken away is highly discriminatory.

The facts of this case are distinguishable from the case in hand. In that case the legislation was made only a particular person. In the cases in hand on account of the uniqueness of the institution and on account of the involvement of the Government and the stake being a high one about public funds, Parliament could take a particular institution as a class by itself.

167. In *Ram Chandra Deb v. State of Orissa* Sri Jagannath Temple Act, 1955 was sought to be challenged being violative of Article 14 of the Constitution inasmuch as the legislature had made a separate Act for a particular temple alone and there was adequate provisions in the Orissa Religious Endowments Act, 1951 which was the general Act applicable to all public temples and religious institutions and contained adequate provisions to meet all situations. A similar contention as raised in the present cases was raised in that case a particular temple had been singled out for hostile discrimination. It was contended that the Commissioner of Hindu Religious Endowments had ample powers under the Act to frame a scheme for the proper management of the temple also and the legislature by enacting a separate piece of legislation for the temple alone, ignoring the other temples of Orissa such as

those at Bhubaneswar where also there might be similar maladministration, had contravened Article 14. This argument was, however, repelled by the Orissa High Court with the following observations:

The principles underlying Article 14 of the Constitution have been reiterated in several decisions of the Supreme Court and it is unnecessary to repeat them in detail. All that that article prohibits is class legislation and not reasonable classification for the purpose of legislation so long as such classification is not arbitrary and "bears a rational relation to the object sought to be achieved by the statutes in question".... In *Chiranjit Lal Chowdhuri v. Union of India* a separate Constitution, on the ground that there were special reasons for passing legislation for that company.

When that case came up in appeal to this Court at the instance of the son of the petitioner, in *Raja Birakishore v. State of Orissa* this Court held : (SCR head-note)

There is no violation of Article 14 of the Constitution. The Jagannath Temple occupies a unique position in the State of Orissa and is a temple of national importance and no other temple in that State can compare with it. It stands in a class by itself and considering the fact that it attracts pilgrims from all over India in large numbers, it could be the subject of special consideration by the State Government. A law may be constitutional even though it related to a single individual if on account of special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

168. It was next contended that there were provisions in the Societies Registration Act itself to meet the situation arising in Auroville. There was no necessity for the impugned Ordinance or the enactment. Shri Venugopal referred to the various provisions of the Societies Registration Act to show that it was open to the Registrar to call for an explanation from the Society for any illegality or irregularity committed by them or if there was a misappropriation of funds, inasmuch as the Act was a self-contained Code and there was absolutely no justification for any ordinance or the enactment. The law and order situation also could be controlled by resorting to the provisions of the Code of Criminal Procedure.

> 169. Whether the remedies provided under the Societies Registration Act were sufficient to meet the exigencies of the situation is not for the Court to decide but it is for the Government and if the Government thought that the conditions prevailing in the Auroville and the Society can be ameliorated not by resorting to the provisions of the Societies Registration Act but by a special enactment, that is an area of the Government and not of the Court." (emphasis supplied)

35. Applying the abovestated principles to the case on hand, the challenge on the basis of violation of Article 14 of the Constitution will have to be answered against the Appellants. Insofar as the assertion that the provisions of the Act such as Sections 8, 23, 32 and 39 to be unreasonable, the same is devoid of merit. The said provisions are to effectuate the avowed object of the legislation. These provisions are founded on the legislative policy, keeping in mind the necessity of such provision in the interests of the general public. The Legislature has attempted to enact a comprehensive special law on related matters to make it a self-contained code while dealing with the problems made manifest by experience. I shall elaborate on these aspects while dealing with the respective provisions a little later.

Re : Article 19(1)(c) :

36. That takes us to the challenge founded on infraction of fundamental right guaranteed under Article 19(1)(c) of the Constitution. In the first place, Counsel for the Appellants made no oral submissions as to in what manner the rights guaranteed to the priestly classes under Article 19(1)(c) were violated. However, this plea finds place in the written submissions filed after the arguments were closed. Indeed in the Plaint filed on behalf of *Badves,* the averment with regard to violation of Article 19(1)(c) is mentioned in Paragraph 37. However, no specific or separate issue was framed by the Trial Court in that behalf. The Appellate Court in Paragraph 52 (in the case of *Badves)* has clearly noted that no argument regarding violation of Article 19(1)(c) of the Constitution was advanced before it. This fact has not been challenged. On this count alone, the issue can be answered against the Appellants.

37. Assuming that we were to consider this plea on its

merits, the only paragraph in the Plaint pressed into service in this context is Paragraph 37. It is mentioned that Section 4(2) of the Act provides that from the date the Act comes into force, the *Samasta Badve Mandal* and *Samasta Badve Samaj* shall cease to function. It is asserted that it is the fundamental right of the *Badves* under Article 19(1)(c) of the Constitution to form an association and that right is set at naught by Section 4(2) of the Act. Besides, none of the restrictions provided for under Article 19(4) of the Constitution can be pressed into service to justify the existence of such a provision. The State in its written statement, particularly in Paragraph 65 has countered the challenge to Section 4(2) of the Act being violative of Article 19(1)(c) of the Constitution. It is stated that Section 4(2) does not prevent the *Badves* from forming any association. It is stated that severance of *Badve Samaj* and *Badve Mandal* from the management and affairs of the temple and registered trusts does not hinder or affect their right to form an association. It is further stated that the Scheme of Section 4(2) of the Act merely envisages that the *Badve Committee, Badve Mandal and Badve Samaj* have no right to inter meddle with the

affairs of the temple. It is then stated that the Act purports to bring all the trusts mentioned in Schedule `C' of the Act in relation to the temples together under the common management envisaged by the Act, as a consequence, there is no role for the said bodies of *Badves* and others. It is then stated that the restriction imposed on the said bodies of *Badves* with regard to the affairs of the temples are reasonable restrictions within the meaning of Article 19(4) of the Constitution.

38. As mentioned earlier, the Appeal Court in Paragraph 52 has categorically observed that no arguments were advanced before it in the context of Section 4(2) of the Act being hit by Article 19(1)(c) of the Constitution. Nevertheless, it has observed that the reasons given for upholding the validity of Section 4 in relation to Article 19(1)(g) are applicable to the issue at hand.

39. Before we proceed to examine the matter further, it is apposite to advert to Section 4(2) of the Act. The same reads thus**:**

> **"4.(1) .....**
>
> **(2)** The Committee or Devasthan Committee formed under rule V of the rules for the management of the property of the idol *Vitthal*, approved by the High Court in *Sakharam Bhimaji Benare and others vs. Gangaram Babaji Badve and others in* Appeal No.141; and *Gangaram Babaji Badve and others* (original defendants) vs. *Sakharam Vaman* (with the consent of the Advocate General) *and others* (original plaintiffs) in Appeal No.168 (1896, P. J. 644), the Samastha Badve Mandal, the Samastha Badve Samaj, the Utpat Committee, if any, or any other body by whatever name called, functioning in relation to the endowment or registered trusts immediately before the appointed day shall cease to function; and all their powers, duties, rights and privileges, if any, in relation to the endowment and the registered trusts, shall vest in the Committee."

40. On the plain construction of this provision, all that this provision purports to do is to prohibit the specified Committees or any other body by whatever name called from functioning in relation to the endowment or the registered trusts after the appointed day and all powers, duties, rights and privileges enjoyed by them in relation to the endowment and the registered trusts to vest in the statutory committee established in terms of Section 21 of the Act. To put it differently, this provision does not disrobe the Appellants from forming associations or unions. However, the sweep of this provision is to unambiguously provide that all

matters relating to the endowment or the registered trusts, shall vest in the statutory Committee established under Section 21 of the Act and the various Committees or any other body by whatever name called shall cease to function or to deal with those matters in any manner after the appointed day. The expression "endowment" has been defined in Section 2(m) which reads thus :

> "2. .....
>
> (m) "endowment" means all property, movable and immovable (including all jewellery and ornaments), belonging or given or endowed in any name of the maintenance, support or benefit of the Temples, or any deity or idol therein, endowed for the performance of any service (including the service of offering to the deity) or charity connected therewith; or for the benefit, convenience or comfort of the devotees and pilgrims visiting the Temples, and includes-
>
> (i) the Temples and premises of the Temples and all the deities or idols therein and all the *Pariwar Devatas* connected therewith;
>
> (ii) all lands, inams, cash allowances and other properties, movable or immovable, encumbrances or charges created in favour of the deities or idols on properties, whenever situate;
>
> (iii) all offerings in cash or kind, gifts or donations (including *bhets*), made or received on behalf of the Temples or any deity or idol therein;
>
> (iv) all income derived from any source whatsoever, and standing in any name, dedicated to the Temples or any deity or idol therein or to any places in the Temples, under the control of the Committee for any pious, religious or charitable purpose; and

(v) any property purchases out of the Temples Fund,

Explanation.- Any gift, inam or jagir granted to a *Badve, Sevadhari or Utpat* or to any other person for the performance of any service including the service of offering to the deity or idol or charity in or connected with the Temples shall not unless the contrary is proved be deemed to be a personal gift to the said *Badve, Sevadhari or Utpat* or such other person, but shall be deemed to be an endowment."

"Registered Trusts" as defined in Section 2(za) reads thus:

"2. .....

(za) "registered trusts" means the trusts specified in Schedule C hereto and includes the trusts which may be amalgamated or added thereto under this Act."

It is useful to refer to Schedule C of the Act, which reads thus:

"SCHEDULE C
REGISTERED TRUSTS
[See section 2(za)]

1. Shri Vithoba Temple, Pandharpur, P.T.R. No.A-379 (Sholapur).

2. Shri Rukmini Temple, Pandharpur (along with all its *Pariwar Devatas),* P.T.R. No.A-365 (Sholapur).

3. The *Pariwar Devatas* of Vithoba , Pandharpur (all the *Pariwar Devatas* registered under a separate trust), P.T.R. No.A-378 (Sholapur).

4. Shri Vitthal Rukmini Deosthan Committee. P.T.R. No.A-324 (Sholapur) along with P.T.R. Nos.A-161, A-162 and A-163 (Sholapur) amalgamated with the Deosthan Committee by an order of the Court.

5. Shri Garud Deosthan. P.T.R. No.A-334 (Sholapur).

6. *Samasta Kili Samajachi Mahadev Devasthane* and *Pundlik Devasthan,* Pandharpur P.T.R. No.A-382 (Sholapur) in so far as this trust relates to the four *Shiv lingas* referred to in clause (q) of section 2 of this Act."

41. On conjoint reading of the above said provisions, it would appear that the Legislature in its wisdom has thought it appropriate to amalgamate the functioning in relation to the endowments and the registered trusts by the specified Committees and any other body by whatever name called and to vest the same in the statutory body established under Section 21 of the Act, which has been created for the better administration and governance of the registered trusts and the endowments. With the establishment of the statutory body under the Act, which is the sole repository for the better administration and governance of the temples, their endowments and for matters connected therewith, those activities which are taken over and vested in the statutory body, by operation of law, could not be inter meddled by any other

person, bodies or Committees by whatever name called after the appointed date. That was the appropriate course to make sure that the management, administration and governance of the temples and their endowments are improved and effectively and properly regulated by the Statutory Committee established under Section 21 of the Act to the exclusion of all other persons and bodies such as the Committee or Devasthan Committee formed as per the High Court Scheme, *Samasta Badve Mandal, Samasta Badve Samaj, the Utpat Committee,* and the like by whatever name called. Notably, the scheme of Section 4(2) of the Act is analogous to the scheme of vesting or transfer of management of endowments under Chapter VII-A of the B.P.T. Act - which provides for special provisions as respects religious and charitable institutions and endowments. Section 56C of the B.P.T. Act provides as to which category of institutions the provisions of Chapter VII-A would apply. Section 56D of the B.P.T. Act provides that the State Government shall from such date as it determines and in the manner specified, transfer the endowment or management thereof to a Committee whereupon the endowment together with all the

immovable or movable property appertaining thereto or as the case may be, management thereof shall vest in the said Committee. Indeed, the trusts/Samitis established by the Plaintiffs are registered under the provisions of Societies Registration Act or B.P.T. Act, as the case may be. To such Trusts/Samitis, restriction such as provided in Section 4(2) of the Act can be legitimately imposed. That does not mean that it affects the rights guaranteed under Article 19(1)(c) as such. Understood thus, Section 4(2) is not a provision to prohibit the Appellants from forming association or unions so as to infringe their rights under Article 19(1)(c) of the Constitution. To put it differently, the rights of the priestly classes to establish or form Trusts/Samitis are not affected, but the said provision merely regulates and restricts their activities, if any, in relation to the management and administration of the endowment and temples in the interests of general public - for social welfare and reform and to regulate economic, financial, political and secular activities associated with religious practice within the temples, which has now vested in the Committee established under Section 21 of the Act. The challenge to Section 4(2) of the

Act founded on the argument of infraction of Article 19(1)(c) of the Constitution is therefore misplaced.

Re : Article 19(1)(f) and 31 :

42. That takes us to the question as to whether the impugned Act or any provision thereof is violative of Article 19(1)(f) read with Article 31 of the Constitution. I propose to deal with the challenge founded on Article 19(1)(f) and Article 31 together, as it is well established position that Articles 19(1)(f) and 31(2) are not mutually exclusive. If any authority is required on that proposition, we can usefully refer to the exposition in the case of **Rustom Cavasjee Cooper v. Union of India reported in 1970 (1) SCC 248**. This decision is by the Bench of 11 Judges of the Apex Court. The issue on hand has been considered in this decision from Paragraph 44 onwards. On analysing the exposition of the earlier reported decisions of that Court, it proceeded to hold in Paras 49 and 51 to 53 as follows:

"**49.** We have carefully considered the weighty pronouncements of the eminent Judges who gave shape to the concept that the extent of protection of important guarantees, such as the liberty of person, and right to property, depends upon the form and object of the State action, and not upon its direct operation upon the individual's freedom. But it is not the object of the authority making the law impairing the right of a citizen, nor the form of action taken that determines the protection he can claim: it is the effect of the law and of the action upon the right which attracts the jurisdiction of the Court to grant relief. If this be the true view and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights.

51. Limitations prescribed for ensuring due exercise of the authority of the State to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specific classes of limitations on the right to property falling within Article 19(1)(*f*). Property may be compulsorily acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purpose it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Article 31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established, be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance if a tribunal is authorised by the Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Article 19(1)(*f*).

52. In dealing with the argument that Article 31(2) is a complete code relating to infringement of the right to property by compulsory acquisition, and the validity of the law is not liable to be tested in the light of the reasonableness of the restrictions imposed thereby, it is necessary to bear in mind the

> enunciation of the guarantee of fundamental rights which has taken different forms. In some cases it is an express declaration of a guaranteed right: Articles 29(1), 30(1), 26, 25 and 32; in others to ensure protection of individual rights they take specific forms of restrictions on State action — legislative or executive — Articles 14, 15, 16, 20, 21, 22(1), 27 and 28; in some others, it takes the form of a positive declaration and simultaneously enunciates the restriction thereon: Articles 19 (1) and 19(2) to (6); in some cases, it arises as an implication from the delimitation of the authority of the State, e.g. Articles 31(1) and 31(2); in still others, it takes the form of a general prohibition against the State as well as others: Articles 17, 23 and 24. The enunciation of rights either express or by implication does not follow a uniform pattern. But one thread runs through them: they seek to protect the rights of the individual or groups of individuals against infringement of those rights within specific limits. Part III of the Constitution weaves a a pattern of guarantees on the texture of basic human rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights.
>
> **53.** We are therefore unable to hold that the challenge to the validity of the provision for acquisition is liable to be tested only on the ground of non-compliance with Article 31(2). Article 31 (2) requires that property must be acquired for a public purpose and that it must be acquired under a law with characteristics set out in that Article. Formal compliance with the conditions under Article 31(2) is not sufficient to negative the protection of the guarantee of the right to property. Acquisition must be under the authority of a law and the expression “law” means a law which is within the competence of the Legislature, and does not impair the guarantee of the rights in Part III. We are unable, therefore, to agree that Articles 19(1)(f) and 31(2) are mutually exclusive.”

43. Reverting to the present case, we shall examine the challenge on the touchstone of Article 19(1)(f) read with Article 31 with reference to the averments in the Plaint filed by Badves, for

the sake of convenience. The same logic will answer the claim of other priestly classes in this behalf. Reliance is placed on Paragraphs 26, 35, 46 and 56 of the Plaint to buttress the argument regarding infraction of rights under Article 19(1)(f) read with 31 of the Constitution. In Paragraph 26 of the Plaint, it is mentioned that the *Badves* are from ancient times hereditary heads of the temples of God *Vithoba* and the *Parivar Devatas*, Chief Priests, managers, overseers and guardians of the idol and the temple and of the property belonging thereto. They are the principal performers of the *Pujas* and masters of ceremonies at the temples and authoritative exponents of the cult of God Vithoba. They have attended to vast multitudes of devotees and have acted as their guides in the performance of religious worship and functions. They are hereditarily in vahivat of religious and temporal affairs of the *Parivar Devatas*. They have personal and beneficial interests in the property and income offered before the deities and in the presents and payments made by the *Yajmans* in

return of services rendered by them, which is the main source of

their livelihood and which has always constituted their property and which is sanctioned by custom, usage, ruling of authorities as well as by court decisions. It is then stated that these rights invest the office of *Badveship* with the character of a genuine legal proprietary right which is a right to property under Article 19(1)(f) of the Constitution. That *Badves* have a right to be maintained out of the income of the temples. They have the right of superintendence over all the religious and secular affairs of the temples which carries with it beneficial enjoyment of property. On this basis, validity of Section 4(1) of the Act was challenged being unreasonable, as it does not serve any interests of the general public, but still attempts to abolish totally the valuable rights of *Badves* recognized by ancient customs, rulers of the time and judicial decisions, infringing fundamental rights of *Badves* under Article 19(1)(f) of the Constitution.

44. The next averment pressed into service for and on behalf of Badves is Paragraph 35 of the Plaint. It is stated that their hereditary rights and privileges have been abolished without

reasonable grounds. No public purpose would be served by acquiring the rights and privileges of the *Badves*, *Utpats* and the *Sevadharis*. That provision for payment of some amount to *Badves* does not render the Section valid, as the amount has been fixed arbitrarily and unreasonably without following any principle and without having any relation to loss caused to *Badves* by deprivation of their property rights. It is then stated that the Commission of Enquiry has recommended the amount of compensation payable to *Badves* in respect of the temple of God *Vithoba* as Rs.7,39,450/- (Rupees Seven Lakhs Thirty-nine Thousand Four Hundred Fifty) and in respect of *Parivar Devatas* as Rs.2,00,100/- (Rupees Two Lakhs One Hundred). However, that amount has been arbitrarily reduced to Rs.2,34,888/- (Rupees Two Lakhs Thirty-four Thousand Eight Hundred Eighty-eight). It is stated that the figures relied by the Commission of Enquiry were not correct. That the average annual income from *Puja* is taken as only Rs.20,318/- (Rupees Twenty Thousand Three Hundred Eighteen) and the average annual income from *Prasad* is assumed as Rs.10,000/- (Rupees Ten Thousand). These assumptions have been made without any

investigation regarding income from *Prasad*. In substance, it is stated that the computation of claim of *Badves* done even by the Commission of Enquiry was improper and illusory. It is stated that the sum payable to *Badves* under the Act is not an amount within the meaning of Section 31(2) of the Act.

45. The next averment with reference to Article 19(1)(f) and 31 of the Constitution pressed into service is Paragraph 46 of the Plaint filed for and on behalf of *Badves*. It is stated that Section 20 of the Act implies that the amount ordered to be paid might not be paid to the persons interested therein for want of funds and in such situation, the person concerned would be paid interest at 4% per annum until the amount is paid. It is then stated that even if the abolition of their hereditary rights and privileges was to be held valid, the *Badves* would be entitled to compensation (as would constitute an `amount' within Article 31 in the light of observations made in **Keshavananda v. State of Kerala reported in AIR 1973 SC 1461)** to be paid forthwith and a post-dated cheque though carrying interest, which incidentally is nominal, is not even an

analogy for compensatory amount provided and therefore, Sections 6, 7, 8, 18 and 20 would contravene fundamental rights under Article 19(1)(f) and Article 31 of the Constitution.

46. Reliance was then placed on the averments made in Paragraph 56 of the Plaint in the context of the issue on hand. It is stated that a number of devotees have made personal gifts and endowments to individual *Badves* on condition that they would perform some services and *sevas* on their behalf in the temple of God Vithoba. For example, there is an endowment in favour of one of the *Badves* with stipulation that he shall daily present flowers to the deity on behalf of the donor. Such endowment being personal to the *Badves* cannot be treated as endowment to the deity or the temple. It is then stated that the explanation to Section 2(m) of the Act is unreasonable and capricious and depriving the *Badves* from their property without any extra compensation and is violative of fundamental rights under Section 19(1)(f) of the Constitution. It is further stated that the expression “in any name” appearing in Section 2(m) are also open to the same

challenge.

47. The State by filing written statement countered the claim of the Appellants in this behalf. The Trial Court took notice of the changed legislative history to the effect that Article 19(1)(f) and Article 31 were omitted by Section 2 of the Constitution (44th Amendment) Act, 1978 with effect from 20th June 1979. The Trial Court then proceeded to consider the submission canvassed on behalf of the Plaintiffs that the constitutional amendment to those articles was not with retrospective effect and therefore the issue of adequacy of compensation was still justifiable. The Trial Court, however, proceeded to observe that even if that argument was to be accepted, there was no proof or evidence to reach at the conclusion that the compensation provided for by law is illusory or unreasonable as such. It then referred to the exposition of the Supreme Court in **Nathdwara Temple's Case (supra)** (Paragraphs 43, 48, 49, 51, 52 & 53) and found that there was no substance in the argument about infraction of rights under Article 19(1)(f) or Article 31(2) of the Constitution. The Trial Court went on

to observe that assuming that the position of *Badves* was like that of a *Mahant or shebait,* they have to administer the property in accordance with the Scheme as framed by the High Court. Those rights cannot be held as right to property under Article 19(1)(f) or Article 31(2) of the Constitution.

48. The Appeal Court also negatived the challenge based on Article 19(1)(f) read with 31 of the Constitution. The first Appeal Court has dealt with those aspects in Paragraphs 53 to 76. The Appeal Court in the first place, noted that the fundamental right to property was guaranteed under Article 19(1)(f) and 31 of the Constitution which came into force in 1950. Later on, Article 31 was amended and ultimately the Constitution (44th Amendment) Act of 1978 abolished the right to property as a fundamental right. Thereby, Article 19(1)(f) and 31 were deleted from the Constitution and instead Article 300-A was introduced in the Constitution which provides that no person shall be deprived of his property save by an authority of law. The Appellate Court then held in Paragraph 59 of its Judgment that the right to property is no more a fundamental

right. The Appellate Court then examined the legislative history of Article 31 and amendments effected thereto from time to time until the last amendment (44th Amendment) of 1978, which came into force with effect from 20th June 1979 deleting Article 19(1)(f) and 31 from the Constitution. It then observed that the validity of the Act in question cannot be tested on the basis of Article as amended, but can be tested only on the basis of Article as stood before the Amendment. It has noted that the present enactment "Pandharpur Temples Act, 1973" received the assent of the President on 3rd April 1974. It has noted that the Articles of the Constitution as stood on 3rd April 1974 will have to be kept in mind. It then proceeded to examine the oral and documentary evidence on record. The first question considered was as to whether the right claimed by the Plaintiffs is property within the meaning of Article 19(1)(f) of the Constitution. It proceeded to hold that the evidence on record would indicate that *Badves* were the Chief Priests, managers, guardians and overseers with regard to idol, temple and its property. Those rights even if abolished, were not required to be compensated in terms of the decision in **Nathdwara**

Temple's Case (supra). The Appellate Court has also referred to the observations in another decision of the Apex Court in **"Jagannath Temple's Case (supra)**", which has followed the dictum in its earlier decision referred to above. The Appellate Court has then proceeded to consider the claim of *Badves* that they were not only the Chief Priests, managers, guardians and overseers with regard to idol, temples and its property, but also had beneficial interest in the property. After making reference to several other Supreme Court decisions mentioned in Paragraph 68 of the Judgment, the Appellate Court proceeded to hold that even if the rights so claimed was property within the meaning of Article 19(1)(f) of the Constitution, that would be of no avail. It proceeded to hold that as per the exposition in **Shirur Math's case (supra),** it would not be necessary to consider the implications and effects of Article 19(1)(f) of the Constitution. The Appellate Court then went on to examine as to whether the rigours of Article 31(2) have been fulfilled, so as to hold that the acquisition of such rights was under the authority of law. It has taken the view that the impugned Act provides for an amount for the acquisition of the property of the

Plaintiffs. Besides, it also lays down the principle as to the determination and payment of compensation amount. It has also negatived the argument that the compensation provided under the Act is illusory on the reasoning that the Plaintiffs have not produced any cogent and satisfactory evidence in that behalf. The Court then went on to observe that in absence of such evidence, it was not possible to return a finding about the compensation amount provided by law was illusory. This is the concurrent finding of both the Courts below. At the end, the Appellate Court has observed that the Act purports to abolish the rights of the priestly classes in the interests of general public. Accordingly, the challenge to Section 4 as well as other provisions of the Act being violative of Article 19(1)(f) read with Section 31 of the Constitution was repelled by the Appellate Court.

49. According to the Respondents, it is unnecessary to dwell upon the challenge to the impugned enactment being violative of Article 19(1)(f) read with 31 of the Constitution. This is so because although the said provisions of the Constitution were in force when

the Act was passed by the State Legislature, however, the impugned provisions were brought into force only with effect from 22nd February 1985. Much before that, the provisions of Article 19 (1)(f) and 31 of the Constitution were deleted from the Constitution by 44th Amendment Act with effect from 20th June 1979. In substance, the argument of the Respondents is that the challenge to the enactment will have to be decided on the basis of the provisions of the Constitution which operated on the date on which the relevant provisions of the enactment were brought into force. This submission is made in the backdrop of the fact that after the Act was passed by the State Legislature and before the provisions could be brought into force by invoking Section 1 of the Act, the Apex Court granted interim relief in favour of the Appellants in Writ Petitions filed by them before that Court, injuncting the State from enforcing provisions of the said Act, except Sections 1, 2, 21, 31, 33, 34 and 39. As a consequence, the main provisions for which the enactment came into being, could not be brought into force and till such time, there was no cause of action to the Appellants to challenge the efficacy of such provisions. The cause of action

would become available only after the impugned provisions were brought into force, which happened on 22nd February 1985; on which date, however, the provisions of Article 19(1)(f) and 31 of the Constitution were not in existence.

50. The Appellants, however, contend that the fact that the relevant provisions of the Act came into force posterior to the 44th Constitutional Amendment Act which deleted provisions of Article 19(1)(f) and 31 from the Constitution, would make no difference. According to the Counsel for the Appellants, by operation of law, the State Legislature was injuncted from enacting law of the kind passed by it by virtue of mandate of Article 13 of the Constitution of India. It is submitted that clause (2) of Article 13 would apply to the case on hand as the impugned Act has been passed by the State Legislature after the commencement of the Constitution. The injunction is against the State Legislature to make any law which takes away or abridges the rights conferred by Part III of the Constitution; and any law made in contravention, to the extent of contravention, was void. To buttress this submission, reliance is

placed on the decision of the Apex Court reported in **AIR 1963 SC 1019 in the case of Mahendra Lal Jaini vs. State of Uttar Pradesh & Ors.**

51. I shall first deal with the case of **Mahendra Lal Jaini (supra).** The facts of this decision were slightly different. The Writ Petition was filed by the Petitioner therein in November 1952 challenging the applicability of The Indian Forest (U.P.Amendment) Act, No.V of 1956 to the land in dispute and also challenging the constitutionality of The U.P. Land Tenures (Regulation of Transfers) Act, No.XV of 1952. The Transfer Act was passed on June 23, 1952 and came into force with retrospective effect from May 21, 1952. Whereas in the present case, although the Act was passed by the State Legislature before institution of the Writ Petition as well as the subsequent suits against which the present Appeals arise, however, the crucial provisions of the Act, which are put in issue or challenged being violative of Article 19(1)(f) and 31 of the Constitution, came into force only with effect from 22nd February 1985 – much before that,

the provisions of Article 19(1)(f) and 31 of the Constitution were deleted. Nevertheless, as observed by the Apex Court in Para 14 of this decision, it is absolutely elementary that the constitutionality of an Act must be judged on the basis of the Constitution as it was on the date of the Act was “passed” subject to any retrospective amendment of the Constitution. In Paragraph 22 of this decision, it is observed that Article 13(2) begins with an injunction to the State not to “make” a law which takes away or abridges the rights conferred by Part III. The Court then went on to observe that there is thus a constitutional prohibition on the State against “making laws”, taking away or abridging fundamental rights. That the prohibition contained in Article 13(2) makes the State as much incompetent to making a law, taking away or abridging the fundamental rights as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the Legislature of a State. Further, Article 13(2) provides that law shall be void to the extent of the contravention. It will be apposite to reproduce the statement of law propounded by the Apex Court

in Paragraph 22 of this decision, which reads thus :

> **"22.** ..... Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision, it must be held that unlike a law covered by Article 13(1) which was valid when made, the law made in contravention of the prohibition contained in Article 13(2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse....."

52. To get over this position, Respondents would contend that the process of making of law is complete only when the material provisions of the Act were brought into force or caused to exist. As the Act was not brought into force, the cause of action to challenge the constitutionality of such an Act would not be available. The argument seems to be attractive but overlooks the dictum of the Apex court that Article 13(2) injuncts the State from "making" any law which takes away or abridges the right conferred by this Part. The expression "make any law" is expansive enough so as to encompass the expression "enacting the law" or "passing of the Act" by the State Legislature. Inspite of such

injunction, if the State Legislature were to enact a law which would contravene the rights conferred by Part III of the Constitution, to the extent of contravention, such law will be a still-born law and dead from the beginning. To put it differently, Article 13(2) uses the expression “make any law”. To bring into force law so enacted is only a consequential action. The position obtaining when the consequential action is taken, cannot be the basis to validate an action which was void at the inception or to borrow the words of the Supreme Court “still born law”. As the Apex Court has observed, it is absolutely elementary that the constitutionality of the Act must be judged in the context of the Constitution as it was on the date when the Act was passed, which would mean passed by the State Legislature. In this context it will be useful to take into account the purport of Clause (3) of Article 31 of the Constitution. It provides that no such law as is referred to in clause (2) made by the Legislature of the State shall have effect unless such law having been reserved for the consideration of the President, has received its assent. In the present case, the President gave assent to the impugned Act on 3rd April 1974, which is much before Article

19(1)(f) and 31 came to be deleted from the Constitution on 20th June 1979. The fact that the crucial provision of the Act were not brought into force till Article 19(1)(f) and 31 were deleted, therefore, will be of no avail.

53. Let us now consider whether the provisions of the impugned Act are in any way violative of Article 19(1)(f) or 31 of the Constitution. Article 19(1)(f) at the relevant time, guaranteed right to acquire, hold and dispose of property. That right, however, was subject to reasonable restriction provided for in Clause (5) of Article 19. Article 19(5) enabled the State from making any law imposing reasonable restriction on the exercise of right under Article 19(1)(f) in the interests of the general public. I shall presently address as to whether the impugned Act and the sweep of the provisions thereof impugned by the Appellants were in the interests of the general public.

54. Be that as it may, the right guaranteed under Article 31 (1) is that no person shall be deprived of his property save by

authority of law. There can be no doubt that the impugned Act and the provisions therein, if upheld, the concomitant would be that the same complied the mandate of Article 31(1).

55. Article 31(2) provided that no property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of law which provides for acquisition or requisition of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law. It further provided that no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash. To put it differently, the quintessence is whether the impugned enactment results in compulsory acquisition of any property or proprietary rights. If so, whether it is for public purpose and by authority of Law. However, if it were not to be a case of acquisition in the context of Article 31(2), then there is no need to examine the issue of public purpose. For

that reason, failure of the State to plead the public purpose behind the Legislation, while defending the validity of the Act, will make no difference.

56. We have already adverted to the decision of the Apex Court in **Rustom Cawasji Cooper's case (supra)**, which takes the view that provisions of Article 19(1)(f), 19(5) and 31 are not mutually exclusive. In Paragraph 50 of this decision, the Apex Court has noted that true character of the limitations under the two provisions is not different. Clause (5) of Article 19 and Article 31 are parts of a single pattern. In Paragraph 49 of this decision, the Apex Court has also noted that in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's rights. The one thread which runs through the limitations envisaged in Clause (5) of Article 19 and Article 31, is that it seeks to protect the rights of the individual or group of

individuals against infringement of those rights giving specific reliefs. In Paragraph 51 of this decision, it is observed that property may be compulsorily acquired only for a public purpose. It is further observed that where the law provides for compulsory acquisition of property for a public purpose, it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interests of the general public. In other words, expression `public purpose' and `in the interests of general public' are interchangeable.

57. The next question therefore that needs to be addressed is what is the sweep of Section 4 of the Act? In the first place, the Courts below have noted that what was taken away by Section 4 was not right to property as such. Section 4, at the highest, would affect the proprietary rights of the Appellants, which would be nevertheless covered by Article 19(1)(f) and 31 of the Constitution. Even so, it is not as if such right is an absolute right. That right can be affected subject to reasonable restrictions provided for in clause (5) of Article 19 and Article 31 of the Constitution. The

Appellate Court having regard to the legislative history in enacting the impugned Act and on analysing the materials on record has positively found that the enactment affecting the purported rights of the priestly classes was in the interests of general public. That finding of fact is unimpeachable. The evidence on record indicates that large number of complaints were received by the State Government regarding the alleged mismanagement of the temples and its properties as well as the rapacity of the priestly classes and continued harassment of the worshipping public, for which the State Government was compelled to appoint a Commission of Enquiry who in turn submitted report which found substance in the complaints. The Commission of Enquiry recommended certain measures to be taken including making of law on the subject. The Act, therefore, is an attempt to remedy the mischief. Indeed, reference is made to the Commission's Report only for the limited purpose of meeting the argument of constitutional validity of the Act to indicate the circumstances in which the Act was enacted by the State Legislature. It is not at all relied to explain any ambiguity in the Act as such or for that matter for interpreting any provision

thereof. The fact that the *Badves* enjoyed certain rights and privileges is virtually accepted by the Legislature. The definition of *Badves* refers to the relevant material on the basis of which such rights have been recognized. Those rights, at the highest be termed as the proprietary rights enjoyed by Appellants. Suffice it to observe that the provision in question, which purports to restrict the Appellants from enjoying the hereditary rights and privileges which have been recognized and enjoyed by them in the past, has been made and brought into force in the interests of the general public, namely, the devotees and pilgrims, who are large in number. In such a case, the challenge on the basis of Article 19(1)(f) of the Constitution is unavailable.

58. Insofar as the restrictions in Article 31(1) of the Constitution, it provides that no person shall be deprived of his property save by authority of law. As the enactment in question has come into being in the interests of general public and the rights and privileges of the Appellants which were enjoyed in the past are

being curtailed or deprived on account of the enactment, which is, by authority of law.

59. The requirement of Article 31(2) of the Constitution is that the compulsory acquisition or requisition would be reasonable if it is for public purpose and by authority of law. As is noted earlier, the impugned enactment is in the interests of general public. The rights and privileges enjoyed by the Appellants in the past will be affected by the coming into force of Act of 1973, that course was necessitated in the interests of general public. Moreover, the law as enacted specifies the amount to be paid to the Appellants or to be determined in accordance with the principle stated in the Act and given in such manner as provided in the Act.

60. Section 4 of the Act seeks to abolish the specified rights and privileges of priestly classes and thereupon all those rights and privileges to be deemed to be acquired and vested in the Committee. In that sense, it is a law to abolish and acquire the prevalent specified rights enjoyed by the priestly classes and is

also a law to pay compensation for such compulsory acquisition. It is also a law providing for the manner in which the amount of compensation is to be determined and to be paid. By virtue of Clause (2) of Article 31, such law cannot be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash. We shall now turn to Section 6 of the Act. It provides for payments of amounts specified against the respective priestly classes. Section 7 enables every person having interest to apply to the authorised officer stating the nature of his right and privilege, the grounds of his claim, the extent of his share in the amount, the document, if any, evidencing such share and the names of such persons who are co-sharers. This is an enabling provision which entitles the person having interest to apply for compensation within the specified time. Section 7 also deals with the manner in which the said Application will have to be proceeded with. Section 8 is also an enabling provision which authorises the person aggrieved, who is left out in Sections 6 and 7 to be eligible to apply to the authorised officer for payment of amount. It also

provides the manner in which the application will have to be proceeded with. Section 18 is a provision which obligates the authorised officer to pay amount to the persons entitled thereto according to the order. It also provides that if the person concerned refuses to receive it, then the authorised officer is required to deposit that amount in the District Court. Some assertion is made in the Plaint with reference to Section 20 of the Act. That is on the assumption that since there is provision to pay interest for the delayed payment, the payment will never be made in time to the affected person by the Authority. Enactment of this provision does not necessarily mean that every payment due and payable under Section 18 of the Act will be paid belatedly. This would be presumptuous. It is only a provision obliging the authorised officer to pay interest for the delayed payment. It is incomprehensible as to how such a provision can be said to defeat the public purpose or the interests of the general public. Suffice it to observe that the provisions of the Act are self contained Code not only with regard to the provisions of abolition of specified hereditary rights and privileges of the priestly classes but also one

for acquisition and for vesting thereof in the Committee; for the acquisition to be so made, the Act makes provision for payment of amount fixed by law as also the manner in which it has to be determined with regard to other claims and the principles to be borne in mind for that purpose. The Act also is a law as to the manner in which the payment has to be made.

61. The argument that the amount specified in Schedule `D' payable to the priestly classes is illusory and without any basis, cannot be countenanced in the light of Article 31(2) of the Constitution which provides that such law shall not be called in question in any Court on the ground that the amount so fixed is not adequate. At any rate, that challenge will have to be repelled as two Courts below have concurrently found that the Plaintiffs have failed to substantiate that the amount specified by the Legislature is illusory. No material is brought to my notice to take a different view, assuming this Court were to re-appreciate the evidence on the argument that the finding recorded by the two Courts below on this point was perverse or error apparent on the face of the record.

Besides, the amount specified by the Petitioner is not “for acquisition and vesting” of the rights and privileges of the priestly classes in the State as such, but to compensate them for the extinguishment of those rights and privileges.

62. The decision of Constitution Bench (7 Judges) of the Apex Court in the case of **Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt reported in AIR 1954 SC 282,** more popularly known as **“Shirur Mutt's Case”** was pressed into service. Reliance was placed on the dictum in Paragraphs 11 and 12 of this decision to contend that the rights and privileges of *Badves* was blended with both the elements of office and property, of duties and personal interests together and neither can be separated from the other. Reliance was also placed on the observation in Paragraph 12 that liberal and wide connotation should be given to the expression of property used in Article 19(1)(f) of the Constitution. According to the Appellants, the rights and privileges of *Badves* would cover such liberal and wide connotation being proprietary

rights. In the first place, the Judgment in **Shirur Mutt' scase (supra)** dealt with the claim of *Mathadhipati*. It is well established that *Mahantship* is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the Office is generally held by an ascetic or spiritual leader, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply. That the office of *Badves* cannot be equated with *Mathadhipati* of the *Math* property. *Badves* are not the owners of the temple property. They are neither the head nor superior of spiritual fraternity. The purpose of Pandharpur temples is not to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to disciples and followers and try to strengthen the doctrines of the particular school or order as in the case of *Maths*. Besides, the rights and privileges of *Badves* are well defined. The Act recognizes those rights and privileges, as is the purport of expression *Badves* contained in Section 2(c) of the Act. If any authority that can answer the claim under Article 19(1)(f) and 31 is on point, is the **Nathdwara Temple's case (supra).** In this case,

the right of *Tilkayat Maharaj* being custodian, manager and trustee of the property emanated from the *Firman* issued by *Rana* of *Udaipur* in 1934. There is similarity in the present case where the right was recognized and allowed to be enjoyed in terms of several decisions of the then ruler which culminated in the Scheme framed by the High Court on 30th September 1896 (*Exhibit 69)*. The specified rights and privileges enjoyed by *Badves,* therefore, were not absolute or interminable as such. Suffice it to observe that the rights and privileges of *Badves* so enjoyed or recognized cannot be equated with the rights of a *Mahant* or a *Shebait*. In Paragraph 43 of the reported decision in **Nathdwara Temple's case (supra)**, while considering similar situation, the Court went on to observe that the right to have the custody of the property such as Custodian has, or the right to manage the property such as the manager possesses, or the right to administer the trust property for the benefit of the beneficiary, which the trustee can do, cannot be regarded as a right to property under Article 19(1)(f) and for the same reason, it does not constitute property under Article 31(2) of the Constitution. This exposition applies on all fours to the case on

hand.

63. As is observed in Paragraph 49 of the same decision, even if it was held that the rights of *Badves* constitute right to hold property, their regulation by the relevant provisions of the Act, would undoubtedly be protected by Article 19(5) of the Constitution. Indubitably, the Pandharpur Temples are public temples and what the Legislature has purported to do is to regulate the administration of the properties of the temple by the Committee constituted under Section 21 of the Act, which was done earlier in terms of the Scheme formulated by the High Court. Moreover, having regard to the multitudes of devotees and pilgrims, visiting the temples and the wide extent of the offerings made to the temple on regular basis, coupled with the several complaints received by the Authorities and the State about the mismanagement and the inconvenience caused to the devotees because of the mismanagement and in particular the rapacity of the priestly classes and continued harassment of the worshiping public, State Legislature in its wisdom enacted the law to deal with those issues

as was recommended by the Commission of Enquiry in its report *Exhibit 145*. Thus understood, the restrictions imposed by the impugned Act on the priestly classes are reasonable and in the interests of the general public.

64. In this decision **(Nathdwara Temple's case)**, the Apex Court has also considered the challenge in the context of Article 31 of the Constitution. In Paragraph 51, the Apex Court has noted that after Article 31(2) was amended by the Constitution (44th Amendment) Act, 1978, the position with regard to the scope and effect of provisions of Articles 31(1) and 31(2) was no longer in doubt. Article 31(2) deals with compulsory acquisition or requisition of a citizen's property and it provides that a citizen's property can be compulsorily acquired or requisitioned only for a public purpose and by authority of law which provides for compensation and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. It further provides that no such law shall be called in question in any Court on the ground that compensation

provided by that law is not adequate. It has also noted that Article 31(2-A) which is expressed in a negative form, in fact means that where a law provides for the transfer of ownership or right to possession of any property to the State or to a Corporation owned and controlled by the State, it shall be deemed to provide for compulsory acquisition or requisition of the property. It is then observed that the power to make a compulsory acquisition or requisition of a citizen's property provided for by Article 31(2) is “eminent domain”; all other cases where a citizen is deprived of his property are covered by Article 31(1) and they can broadly be said to rest on the “police powers” of the State. It is further held that deprivation of property falling under the “police powers” cannot be effected save by authority of law. It is further held that `save by authority of law' would mean that law by whose authority such deprivation can be effected, must be a valid law which must not contravene the other fundamental rights guaranteed by the Constitution. In Paragraph 52 of this decision, the Court went on to consider similar situation as obtains in the present case.

65. A priori, only if we were to assume that it is a case of compulsory acquisition or requisition of the specified rights and privileges of the priestly classes - consequent to abolition were to be deemed to have been acquired and vested in the Committee established under Section 21 of the Act, it would be a case in exercise of power of eminent domain covered by Article 31(2). This will be on the further assumption that the said Committee was a State or a Corporation owned and controlled by the State. It is not possible to accept this position either in fact or in law. For, the vesting of the rights and privileges in the Committee constituted under Section 21 of the Act is not a transfer of the ownership or right to possession of any property to the State or to a Corporation owned or controlled by the State as such, which is the pre-requisite in terms of Article 31(2A) to constitute compulsory acquisition or requisition of property. As in all other cases, where the citizen is deprived of his property rights in exercise of “Police Powers” of the State, that is permissible under authority of Law which must not contravene any other fundamental rights. In the present case, the impugned Act purports only to extinguish the secular office vesting

in *Badves* and *Utpats* or in Committee or of any person as specified in Section 4(1)(a). Insofar as clauses (b) and (c) of Section 4(1) are concerned, the same are intended to prevent the priestly classes from undertaking any activity "on behalf of *yajmans* or pilgrims" in any of the temples and to receive, demand and appropriate the income from such activities as also from the offerings made to any deity in the temples including their respective *Parivar Devatas*. Thus understood, these provisions are in the nature of abolition of or extinguishment of such recognized hereditary rights and privileges of the priestly classes which neither interferes with the matter of religion or activity for the purpose of religion as such. I shall elaborate on these aspects a little later while considering the challenge in the context of Articles 25 and 26 of the Constitution. Suffice it to observe that the deprivation of the specified rights and privileges of the priestly classes do not contravene any other fundamental rights guaranteed. Such secular activities could be extinguished or abolished as it would not contravene the other fundamental rights guaranteed by the Constitution. Insofar as the rights and privileges of receiving,

demanding and appropriating the income enjoyed by the priestly classes, the same have been abolished or extinguished and transferred to the Committee, which is to bring about change in the secular, economic and financial matters and for social welfare and reform. As observed by the Apex Court, the effect of such transformation is that the office of one functionary is brought to an end and another functionary has come into existence in its place. Such a process cannot be said to constitute the acquisition of the extinguished office or of the rights vesting in the person holding that office. Indeed, in the case of **Nathdwara Temple's case (supra),** the *Tilkayat* was to be continued as member of the Board and the activities which he earlier carried out alone, were to be carried on by him along with his colleagues in the Board. However, that cannot be the basis to distinguish the principle stated regarding the purport of Article 31 of the Constitution. In the case of **Bhurinath & Ors. v. State of Jammu & Kashmir & Ors. reported in (1997) 2 SCC 745,** popularly known as **"Vaishnavdevi Temple's Case",** the Apex Court considered similar contention that the effect of the enactment was to abolish the

customary rights or duties of service as *Baridar* and vesting thereof in the Board. It was argued that the Board was controlled Corporation within the meaning of Article 12 of the Constitution. The Apex Court has negatived that argument and held that the State did not acquire the rights so abolished to itself, to answer the issue in the context of Article 19(1)(f) and 31 of the Constitution (*see paragraphs 26 to 33)*. In the case of **Kakinada Annadana Samajam reported in AIR 1971 SC 891** while rejecting similar claim of hereditary trustees, the Constitution Bench of the Apex Court expounded that the hereditary trustees have only a bare right to manage and administer the secular estate of the institution or the endowment and they do not have proprietary or beneficial interest either in the corpus or in the usufruct of the estate. The only exception is that the hereditary trustee succeeds to the office as of right. Nevertheless he cannot be equated to a *shebait* of a religious institution or a *Mathadhipati* or the *Mahant*, who have a much higher right with larger power of disposal and administration and they have a personal interest of the beneficial character. That a bare right to manage an institution or an endowment cannot be

treated as property within Article 19(1)(f) and Article 31 of the Constitution. Suffice it to observe that as the Act stands the test of reasonableness being in the interests of general public and has been brought into existence for public purpose including to regulate economic, financial or secular activity associated with the religious practice and for social welfare and reform, the challenge on the ground of violation of fundamental right of the priestly classes under Article 19(1)(f) or 31 cannot be sustained.

66. It will be useful to refer to in detail to the recent decision of the Apex Court in **Bhurinath - Vaishnavdevi Temple's case (supra).** In the said case, the Act which was challenged, intended to regulate only better management, administration and governance of *Shree Mata Vaishnavdevi shrine* and its endowments including the land and the hills attached and appurtenant to the Shrine within the premises specified therein, including the Shrine, holy cave and other temples. Even in the said case, Board was established with authority to take possession of those properties and for their administration and use for the purpose of the Act and

for convenience, comfort or benefit of the pilgrims *(See Paragraph 14)*. In Paragraph 28 of this decision, it is observed that the said Act abolished the customary right or duty of service as *Baridar* and the receipt of offerings being conditioned upon performing *Puja,* he loses the right with cessation by performing service. It is noted that right to receive offerings, by operation of Section 19(1) of that Act has ceased. As the enactment concerns, State of Jammu & Kashmir inspite of deletion of Article 19(1)(f) and Article 31 with effect from 20th June 1979, by operation of Section 2 and 6 of the 44th Amendment Act, those provisions were still available to the residents of Jammu and Kashmir. The Court has referred to its earlier decisions. In Paragraph 29, the Court went on to observe that acquisition has the effect of deprivation and enjoyment of the property. The acquisition in order to be valid must be for a public purpose and the person deprived of the same is entitled to compensation. It is then observed that however, in respect of the property which was divested from such person, i.e., right, title and interest coupled with possession must be vested in the State or beneficiary, such deprived person is entitled to compensation. It is

then observed that it is equally settled law that abolishing and/or extinction does not mean vesting, but the two are distinct and separate. Deprivation of property is concomitant to acquisition. The right to superintendence of management, administration and governance of the Shrine is not the property which the State acquires. The Court then went on to observe that the said Act merely regulated the affairs of the functioning of the Shrine and that alone was transferred from the Trust to the Board. The irresistible conclusion, therefore, observed the Apex Court, is that, the challenge to the validity of the Act on the touchstone of Article 19(1)(f) and 31 is fallacious. The principle expounded in this decision if invoked, the irresistible conclusion is that the argument regarding infraction of Article 19(1)(f) and Article 31 of the Constitution is devoid of merits.

Re : Article 19(1)(g) :

67. That takes us to the next challenge which is founded on the argument that the Act is violative of fundamental rights

guaranteed under Article 19(1)(g) of the Constitution of India. Oral argument on this issue was canvassed by the Counsel for *Badves*. For the sake of convenience, therefore, I shall examine this argument in the context of the claim of *Badves* in the Plaint as filed. Reliance is placed on two Paragraphs which, according to the Counsel, addresses the issue under consideration. Reference is made to Paragraph 27 of the Plaint, wherein it is stated that *Badveship* is *vritti* i.e. an occupation. For generations, the occupation of the *Badves* has been that of religious services at the temple of God *Vithoba* and the *Parivar Devatas* by themselves or on behalf of and for the *Yajmans*. That *Badveship* is principal if not the sole source of livelihood of the *Badves*. It is asserted that the provisions of Section 4(1) of the Act convey the effect of wholly and unreasonably denying the *Badves* their fundamental rights to practice an occupation which is pursued by them since times immemorial and thereby depriving them of the primary source of their livelihood. These provisions are therefore violative of Article 19(1)(g) of the Constitution, as the same are not saved by Article 19(5) of the Constitution being not in the interests of the general

public. Reference is then made to averments in Paragraph 43 of the Plaint, wherein, it is stated that Section 7 of the impugned Act provides for claims to be made by persons interested in receiving the amount for payment of which provision is made in Section 6(1) of the Act. It is the right and practice of *Badves* from times immemorial to distribute for themselves the surplus income from the temples amongst the members of the community of *Badves*. It is then stated that the provisions for individual *Badves* to make a claim or his share in the amount is contrary to such right and practice and creates unavoidable complications, particularly, as some of the *Badves* who are minors can neither make a claim nor pursue it. The scheme of settling the amounts to be paid to the various *Badves* adumbrated in Sections 7 to 18 of the Act, is therefore arbitrary and unreasonable and denies *Badves* of their fundamental right under Article 19(1)(g) of the Constitution.

68. The Respondents controverted the above said stand taken on behalf of *Badves* in the written statement filed before the Trial Court. The Trial Court took the view that the rights of *Badves*

cannot be equated to practice of profession or carrying on any occupation, trade or business. For that, reliance was placed on the observations in the case of **State Training Corporation of India Ltd. v. The Commercial Tax Officer & Ors. reported in AIR 1963 SC 1811** and another decision in the case of **Narendra Prasadji Anandprasadji Maharaj & Ors. v. The State of Gujarat & Ors. reported in (1975) 1 SCC 11.** The Appeal Court has dealt with the issue on hand elaborately in Paragraphs 77 to 107. After referring to the averments in the Plaint, the Appeal Court first adverted to the purport of Section 4 of the Act. The Appeal Court then adverted to the evidence of Plaintiff's witness *Narayan Dattatray Badve,* wherein he has stated that the main source of income of *Badves* was to receive the proceeds of the temple while performing all religious functions related to the temple of God *Vithoba* and of *Parivar Devatas.* He has then deposed that the *Badves* were owners in qualified sense, of the idol, temple and *Parivar Devatas,* so also *Badves* were the chief priests, managers, overseers, guardians of the idol, temple and the property belonging to them. The *Badves* were also custodian of the property, principal

performers of *Pujas* and masters of ceremonies. He has also spoken about different *Pujas* and rituals practiced by *Badves*. He has also spoken about the various *Pujas* performed by *Badves* for and on behalf of *Yajmans* and pilgrims. The Appeal Court has also adverted to the version of this witness in the cross-examination, where he has stated that *Badveship* is acquired by birth. This witness has also admitted that amongst *Badves* there are doctors, advocates, government employees and businessmen. He has also admitted that some of them are residing out of Pandharpur, still those persons are receiving share in the *vritti* without doing anything in *Badveship*. This witness has also admitted that he has not memorised the *mantras* of *Kanva Shakha.* He admits that he was only matriculate and has not studied *Sanskrut* at Kashi. He also admits that he has not studied *Hindu Dharma Shastra*. He has also admitted that some *warkaries* take *darshan* only of *Kalas* (pinnacle). On analysing the evidence, the Appellate Court proceeded to find that *Badves* have alleged that *Badveship* is a principal, if not the sole source of income of their livelihood. There is, however, no evidence to substantiate the same. It has then

found that it is not clear from the record as to how many persons from *Badve* families are engaged elsewhere as doctors, advocates, businessmen and Government employees and how many persons from *Badve* community are performing *Badveship*. Further, there is nothing on record to show as to whether any specific qualifications are necessary for *Badveship*. On this reasoning, the Appellate Court proceeded to hold that it would be legitimate to infer that the person who is not qualified to do *Badveship* or for that mater not engaged in the activities of *Badveship* is getting share in the said income, only by reason of his birth in *Badve* family. The Appeal Court also referred to the view recorded by the Trial Court relating to the point in issue while considering Issue No.16. Amongst others, that Article 19(1)(g) can be invoked only by citizens, whereas the Plaintiffs were claiming that right as a religious denomination. The Appellate Court has then noted that the observations so made by the Trial Court were not correct as from the averments in the Plaint, it was obvious that the Plaintiffs had filed the Suit in representative character, for which reason, the challenge on account of Article 19 was required to be considered.

The Appellate Court then proceeded to hold that Article 19 of the Constitution does not guarantee an absolute right but a right subject to permissible restrictions. The Appellate Court then referred to the case of **Narendra Kumar & Ors. v. The Union of India & Ors. reported in AIR 1960 SC 430,** which according to it has resolved the conflict between expression "restriction" so as to include prohibition and deprivation. It has then noted that the Constitution guarantees right and not a privilege. Reference is made to the decision in the case of **The State of Madras v. V.G.Row reported in AIR 1952 SC 196.** It has then found that the evidence on record indicates that *Badveship* or *Badvepana* or *vritti* can hardly be styled as profession, occupation, trade or business. The nature of duties or *sevas* performed by *Badves* would go to show that they were performing or doing the same as privilege and not as a right. It has found that *Badveship* or *Badvepana* or *Vritti* is a privilege, not a right. It has found that the activities of Plaintiffs cannot be strictly termed as trade, profession, or business as they are understood in common parlance. It then went on to observe that even if the activity was covered by such

terms, the State had every right to put restriction on it in the interests of the general public. Moreover, the rights so claimed by *Badves* has the effect of foisting the rights of *Badves* on the unwilling devotees. In such a case, the rights guaranteed to the devotee under Article 25 of the Constitution will be infringed. It has noted that the evidence on record indicates that during *Ashadhi, Kartiki, Maghi and Chaitra Ekadashis*, large number of devotees or pilgrims visit Pandharpur for *darshan* of God *Vithoba*. Similarly, number of persons come to the temple daily from various parts of the country to take *darshan* of the deity. Substantial number of devotees, pilgrims are poor people, who are content with taking *Padasparsha darshan or Mukhda darshan* as compared to various *pujas* performed by and on behalf of the *Yajmans* by *Badves*. It has found as of fact that by performing various *pujas, the Badves* earn more income than the income which they would receive in the offerings made by the devotees taking Padasparsha *Darshan or Mukhda Darshan*. The Appellate Court has found that *Badves* have exploited the situation because of their long association with the temple and the deity. They have evolved new systems including

Divaskari Badves, which means *Badve* who purchases the right of all the *Badves* of taking next day's offerings made by the devotees before God *Vithoba* and to remain in-charge of the collections for the day. It has drawn inference that such *divaskari Badve* who purchase that right in the auction held between the *Badves* would be obviously interested in collecting more income. The Appellate Court has also adverted to the series of litigations between *Badves* on the one hand and other priestly classes as also the Committee, more importantly asserting right in the income from the offerings made to the deity and *Parivar Devatas* in the temple. In the end, the Appellate Court has held that the restrictions imposed by the State on the rights and privileges of *Badves* was in the interests of the general public. Accordingly, the Appellate Court proceeded to repel the challenge to the Act being violative of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

69. The first question that arises for my consideration is what are the recognized rights and privileges of the priestly classes, in particular, of *Badves,* at whose instance I am considering the

challenge to the provisions of the Act on the ground that it abridges rights guaranteed under Article 19(1)(g) of the Constitution. It is seen that they have been declared as the Chief Priests, managers, guardians and overseers of the idol, temple and property belonging thereto. They are obliged to keep order and to bid the *Sevadharis* to perform duties belonging hereditarily to those priests. They are not declared to be the owners of the temples, idol or the property. Their hereditary rights in the management of the property of the idol *Vitthal* were authoritatively determined in the Scheme approved by the High Court, which was later on explained and modified by subsequent decisions. The question is: whether these recognized rights and privileges can be said to be profession, occupation, trade or business of the Appellants? One thing is certain that the activities which are affected by Section 4 of the Act cannot be said to be profession, trade or business. Assuming it to be so, the State has every right to put restriction on such activity. Restriction may result in total prohibition or deprivation of such right, provided the same is in the interests of the general public. It is amply clear from the record that the Act of 1973 came into being

only with a view to check the reported mismanagement and malfunctioning in the affairs of the temples of *Vitthal* and *Rukmini* at Pandharpur and the inconvenience, harassment and breach of peace suffered by the multitude of devotees or pilgrims due to the rapacity of the priestly classes. The sweep of the Act is not only in the interests of the general public, but also an attempt to regulate or restrict the economic, financial, political or other secular activities which were associated with religious practice followed and performed in the place of worships covered by this Act. It is also a piece of legislation to bring about social welfare and reform in the Temples. On this finding, it is wholly unnecessary to dwell upon other matters as to whether the activities performed by the Appellants from time immemorial, can be said to be covered by the term profession, occupation, trade or business.

70. There is yet another aspect which is overlooked by the Appellants in asserting that the enactment which attempts to curb their specified activities to be violative of their fundamental rights. Either the Appellants can claim that the activities performed by

them were part of their occupation or are for propagating religion. Asserting for share in the income from the offerings made by devotees to the deity and *Parivar Devatas* can neither be occupation or for that matter any religious activity or matter of propagating religion. I shall elaborate on the latter while dealing with challenge on the basis of violation of Articles 25 and 26 of the Constitution. Suffice it to observe that the challenge to the validity of the Act based on violation of Article 19(1)(g) of the Constitution is devoid of merits.

Re : Articles 25 and 26 :

71. We shall now consider the challenge to the validity of the Act on the argument that the same infringes Articles 25 and 26 of the Constitution. It is well established by now that rights guaranteed under Articles 25 and 26 of the Constitution though can be generally mentioned as right of freedom of religion, the spheres in which the said provisions operate is not exactly the same. (*see Paragraphs 10 and 11 of* ***Ratilal Panachand Gandhi & Ors. v.***

State of Bombay & Ors. Reported in AIR 1954 SC 388). Although right guaranteed under Article Article 26(a) and (b) are absolute rights, same does not apply to right under Article 26(d). Although the religious denomination or any section thereof has right to own and acquire movable and immovable property, it has no absolute right to administer such property. The right to administer such property is subject to the law in that behalf. The rights under Article 26 are available to every religious denomination or any section thereof. Even rights under Article 26 (a) and (b) are not absolute but are subject to public order, morality and health. The right guaranteed under Article 26 to religious denomination or any Section thereof is slightly on a higher pedestal. The question as to whether the rights guaranteed under Article 26(b) to a religious denomination or any section thereof can be controlled by a law which is protected by Article 25(2)(b) of the Constitution, that conflict has been answered in the case of **Sri Venkataramana Devaru & Ors. v. State of Mysore & Ors.** by five Judges' Bench of the Supreme Court reported in **AIR 1958 SC 255.**

72. On the other hand, rights guaranteed to all persons under Article 25 relating to freedom of conscience and the right freely to profess, practice and propagate religion is not only subject to the limitation of public order, morality and health but also to the other provisions of Part III of the Constitution. At the same time, right guaranteed under this Article does not take away the authority of the State to make any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice and in particular providing for social welfare and reform or the throwing open of Hindu Religious institutions of a public character to all classes and sections of Hindus.

73. Before going into any other aspect, therefore, it would be appropriate to inquire into the plea that the Pandharpur temples are religious denomination or for that matter, the Plaintiffs belong to religious denomination or any section thereof. If this issue is to be answered against the Plaintiffs, then the area of controversy will

have to be judged in the light of the parameters provided in Article 25 of the Constitution; in which case, the rigours for considering the constitutional validity of the Act will get narrowed down to considerations, amongst others, as to whether the purpose of the Act is to effectuate the fundamental rights of the devotees or the pilgrims to profess, practice and propagate religion and also for regulating or restricting economic, financial, political or other secular activity which are associated with religious practice and to provide for social welfare and reform in the Pandharpur temples, which are indeed of a public character.

74. Insofar as assertions referable to claim under Article 26 of the Constitution of India, I shall first refer to the relevant averments in the Plaint filed for and on behalf of *Badves*. Reliance is placed on Paragraphs 5 onwards. In Paragraph 5, it is asserted that *Badves* themselves perform all *sevas* of *Parivar Devatas* as a matter of their *Upasana* and of right without the help of *Sevadharis*. That *Badves* alone have right to receive the offerings placed before the *Parivar* Devatas and after defraying the necessary and

requisite expenses, to appropriate the residue for themselves. That the *nitya seva* common to all *Parivar Devatas* consists of performing *puja* in the morning, offering *Naivedya* and waiving *aarti* in the evening. In Paragraph 6, it is stated that *Badves* have from ancient times, adopted certain religious practices in consonance with their status as the chief priests as well as devotees of God *Vithoba*. The practices specified in the Plaint are as follows :

> "a) Fasting on every Ekadashi days except Sudha Ekadashi in Shravan and Chaitra.
>
> b) Not going out of Pandharpur on Wednesday which is the day of God Vithoba.
>
> c) Wearing tulshi mala constantly and utter Vithal Namjap everyday.
>
> d) Observance of two navaratras of God Vithoba one in month of Ashadha and other in the month of Kartik in addition to the Navaratra in the month of Ashwin.
>
> e) Observances of Kuldharma by feasting(instead of fasting as usual) on Shrawan Sudha Ekadashi and Chaitra Sudha Ekadashi, as these two days are of rejoicing and not of fasting, since the Deity was reinstated by Badves on these days after having been kept in the bidding for fear of the Muslim iconoclast.
>
> On these two day from every family of a Badve Naivedya consisting of puranpoli is offered to the God Shri Vithoba even though the said two days are the days of Ekadashi (fast).
>
> f) Observance of Harijagar on every Ekadashiday, Gokul-

ashtami, Mahashivratra, Narsinha Jayanti, Ramanavami etc.

g) Celebrating the festivals known as Gokulastami, Namaapath-Utsav for seven days during which a Badve in reply play Veena and recites Abhangas throughout day and night in the temple of Vithoba, on last day of the festival, Dindi procession is taken out and the festival ends with feast to the Devotees. All expenses relating to the festivals and other items are borne wholly by the Badves.

h) Performance of special Mahapuja at midnight of Mahashivaratra day.

i) Worship of both Hari and Har and observance of ceremony connected with both without distinction.

75. In Paragraph 7, it is asserted that there has been no break in or departure from the performance of the daily and occasional religious *sevas* and services according to the traditionally established custom and usage. In Paragraph 8, it is asserted that the various forms of *sevas* of God *Vithoba* and his *Parivar Devatas* as well as various rituals, observance and the ceremonies performed by the *Badves* through centuries are in consonance with their religious beliefs and practices and recognized as such by ruling authorities and the Court decisions from time to time. The *Badves* have implicit faith in those forms of *sevas,* rituals, observances and ceremonies which form an essential and integral

part of their religion. It is then stated that the devotees of God *Vithoba* and *Parivar Devatas* have also equal faith and belief in various rituals, observances, ceremonies and modes and manner of worship conducted and performed by *Badves* and they regard the system as conducive to their well being and salvation. In Paragraph 9, it is stated that the *Badves* are held in high reverence by the devotees of God *Vithoba*. They are regarded as representatives of God *Vithoba;* that at a number of religious functions and ceremonies, *gandha and Akshada* are applied on the forehead of *Badves* at the time of beginning of functions or ceremonies; that many *warkaries* are keen on wearing the *Tulsi Mala* at the hands of *Badves* who first sanctify the *Tulsi Mala* by offering it to deity and then handing over it to *warkaries*. It is then stated that when the *Palkhi of Sant Dnyaneshwar Maharaj* starts from *Alandi* to Pandharpur in procession of devotees for the *Ashadi Mela,* the turban and coconut are offered to *Badves* as representatives of God *Vithoba*. It is then stated that *Badves* are given the honour of performing the *Keertan* in the temple of Shree

Sant Dnyaneshwar Maharaj at *Alandi* on the 12th day of Dark half of the month of *Kartik* (Kartik Vd.12). The devotees who perform *shraddha* and offer *pindadan* at *Vishnupad* situated in river *Chandrabhaga* seek blessings of *Badves* as they believe that the object of *pindadan* would not be adequately served without the blessings of *Badves*. In Paragraph 10, it is stated that *Badves* serve God *Vithoba* in other ways as well. They are wholly in-charge of all the secular affairs relating to the idol, the temple and the property belonging thereto. They are also solely responsible for ensuring the safety of the idol and its property. In times of distress and threat, *Badves* guarded the idol by hiding it in their homes or elsewhere. It is then stated that *Badves* have framed rules and regulations to maintain order at the temple. The Scheme framed by the High Court has therefore recognized *Badves* not only as chief priests but also managers, overseers, guardians of the idol, the temple and the property belonging thereto and also as owners of the temple and its property in qualified sense having supreme power of management. It is stated that *Badves* are thus not only religious but also temporal heads of the temple and have well-

defined religious belief and faith, rights and privileges, duty and obligations in relation to the idol, the temple and property belonging thereto. In Paragraph 11, it is stated that the dedication of the life of *Badves* for generations past to the *seva* of God *Vithoba, Upasya Daivat* of the *Badves* and his *Parivar Devatas*, the religious services rendered by them continuously, uninterruptedly and exclusively from times immemorial, their exclusive association with the maintenance of the religious affairs of the idol and the temple, the responsibility to maintain and propagate the *bhaktimarg* of *upasana, and seva* of God Vithoba, their confirmed belief and faith in the various rituals, observances, ceremonies and modes of worships as forming an essential and integral part of their religion. Their status as chief priests, principal performers of *pujas* and masters of ceremonies at the temple, their special and self imposed rules of conduct as chief priests, their position as ardent followers and authoritative exponent of the cult of God *Vithoba* their attention to vast multitudes of devotees, guiding them in the performance of religious worship and religious functions, their common faith which binds them together into one class, the

esteem in which the *Badves* as a community are held by the devotees of God *Vithoba* as a matter of religious belief, the recognition by Yajmans and other devotees that *Badves* are capable and fit to officiate as *Purohit* and to perform the *puja* efficaciously. The compactness of the *Badve* community, the exclusive common faith and organization of the *Badves*, their designation by distinctive name and religious spiritual fraternity represented by them, cumulatively mark *Badves* as a distinct religious section. It is further stated that *Badves* have at all times constituted themselves into and formed a religious denomination within the meaning of Article 26 of the Constitution. They also constitute a section of devotees who have faith in and follow the cult of God *Vithoba* which has exclusive features which form a religious denomination within the meaning of Article 26. Reliance is then placed on Paragraphs 31 to 34 in the context of the plea of unconstitutionality of the Act under Article 26 of the Constitution. In Paragraph 31, it is stated that *Badves* constitute and have at all times constituted a religious denomination within the meaning of expression in Article 26 of the Constitution. For that reason, they

have right to maintain the temples of God *Vithoba* and the *Parivar Devatas* which are denominational institutions. That Section 4(1) has the effect of abolishing these rights by taking away entirely the management of the temples from the *Badves* and vesting it in the Committee, without thereby promoting public order, morality, and health. In Paragraph 32, it is asserted that the invaluable rights to manage their own affairs in matters of religion would include the traditional pattern of causing *darshan* of God *Vithoba* to his devotees and of arranging and performing the *seva* of God *Vithoba* through the *Badves* and Sevadharis and of the *Parivar* Devatas through *Badves*. It is stated that as religious heads of the temples, they have right to conduct, perform and arrange for and supervise the worship of God *Vithoba* and the *Parivar Devatas* and the services rendered therein in accordance with the traditional custom and usage, have also the right to distribute *gandh, teertha and prasad* and also perform various daily and occasional services. It is stated that they have right to manage their own affairs in matters of religion including rites, ceremonies and observances and such rights exercised and enjoyed by a religious

body like the *Badves* are their guaranteed fundamental rights, which no Legislature can take away. It is stated that Section 4(1) of the Act infringes such right which is in contravention of Article 26 (b) of the Constitution. In Paragraph 33, it is stated that *Badves* have a share in offerings made to God *Vitthal* and the *Parivar Devatas*. The right of *Badves* to acquire and own property in such form and the right to demand, receive and appropriate the income from offerings, *pujas, etc.* are denied by provisions of Section 4(1) (b) and 4(1)(c) of the Act in violation of Article 26(a) of the Constitution. In Paragraph 34, it is stated that the fundamental right of *Badves* as religious denomination to administer their property in accordance with law is taken away which is violative of Article 26(d) of the Constitution. It is also stated that the proviso to Section 23(1) of the Act deprives *Badves* from being appointed in the Committee for a period of 15 years. Besides these averments, reliance is placed on Paragraph 38; it is stated that by virtue of Section 5(1) of Act, the management and administration is transferred to and vest in the Committee. The *Badves* being religious denomination, cannot be deprived of their right to

administer the property of the temples, the the Committee to be established under Section 21 of the Act does not contemplate representation of the *Badves* on the Committee. For these reasons,

Section 5(1)(a) of the Act was violative of Article 26(d) of the Constitution.

76. In Paragraph 42, validity of provisions of Section 5(1)(c) of the Act are put in issue which enables the Committee to carry on the *nitya* services, depriving *Badves* from carrying on those services, thereby being violative of Article 26 of the Constitution. It is stated that occasional or *Naimittik* services are time honoured religious practice. It is also stated that it is the traditional custom for the devotees to receive *Teertha* and *Prasad*, but no provision is made in the impugned Act, recognizing this custom. This customs is an ancient custom, handed down by tradition that devotees may offer *Naivedya* (food offerings) to the deity and that the food for *Naivedya* has to be cooked by a *Brahmin* and brought to the deity

by a *Brahmin* in holy clothes and further that the food offering is returned to the devotees as the grace of God *Vithoba*. These recognized customs will be discontinued which would infract right of devotees and *Badves* under Article 25 of the Constitution. In Paragraph 47, provisions of Section 21(1) and 23 are challenged, as it do not provide that the member of the Committee should be resident of Pandharpur or neighbouring places. Besides, the proviso to Section 23(1) of the Act disentitles the person, who has claimed amount under Section 6 or Section 8 from being appointed as member of the Committee for a period of 15 years. The embargo is not only arbitrary, unreasonable, capricious and discriminatory, but also infringes rights of *Badves* under Article 26 (d) of the Constitution. In Paragraph 51, provisions of Sections 44 (1)(c), (f) and (h) and Section 44(2)(b), (c), (e) and (f) of the Act are challenged on the ground that the temple funds will be utilized for purposes extraneous to the exclusive purposes of management and maintenance of temples and worship of the deities. That will be beyond the contemplation and intention of the devotees who made offerings, donations, gifts, etc. and operate as an invasion of

the fundamental rights under Article 25 of the Constitution. Lastly, reliance is placed on Paragraph 52 of the Plaint, where provisions of Section 45(1) of the Act are challenged on the ground that the same confer unlimited and unrestricted power on the State Government to give directions to the Committee on matters of Policy, thus violating Articles 25 and 26 of the Constitution. It is stated that it is not unlikely that the Policy Makers of the State Government may be non-Hindus and that would result in non-Hindus interfering in the matters of highly religious Hindu institutions of God *Vithoba,* Goddess *Rukmini*, their *Parivar Devatas*, shocking the religious conscience of the Plaintiffs and other devotees. It is noticed that the averments in the Plaint filed by *Badves* essentially are to claim that they are religious denomination or section thereof and not to assert that the Temples have been established by and for any religious denomination. Nor it is claimed that the Temples are religious denominational institutions.

77. In the Plaint filed for and on behalf of *Sevadharis*,

averments with regard to infraction of Article 26 of the Constitution can be culled out from Paragraphs 5 onwards of the Plaint. Reference can be made to averments in Paragraph 5, which essentially assert that *Sevadharis* were and are rendering services which constitute an integral part of religion and its tenets has practiced in Pandharpur in the famous temple of *Shree Vithoba* at Pandharpur. The claim set-up on behalf of *Sevadharis* is in the following words :

> "5. The plaintiffs affirm that the various services which the Pujaris were and are rendering constitute an integral part of Religion and its tenets as practised at Pandharpur in the famous temple of Shri. Vithoba at Pandharpur. The plaintiffs submit that the temples of God Vithoba and Goddess Rukmini are Denominational temples and the properties and the income of the said temples are the properties of Religious Denomination and that the Institution of Sevadharis including the Pujaris and the various rituals and duties (ceremonies) performed by the Sevadharis inclusive of Pujaris constitute an integral part of the Religious Denomination. The plaintiffs affirm that the various functionaries like the Utpats and Sevadharis along with the temples of God Shri. Vithoba and Shri. Rukmini and other Parivar Devatas have connection with the temples Shri Vithoba, Rukmini and other Parivar Devatas since the establishment and growth of the temples themselves. The origin of the said temples as also the connection of the various functionaries mentioned above are lost in antiquity. The plaintiffs affirm that the connection of these functionaries with the said temples is so intimately intertwined with the origin, development and survival of the temples and Religious Practices prevailing in the said temples so as to constitute one Religious Denomination. The plaintiffs affirm that the foundings of the various temples with

which they are concerned are connected with one Pundalik who is a devotee of God Vishnu (a form of Shri. Vithoba). The date of like of Pundalik is uncertain, but it appears that it was somewhere in the Seventh Century A.D. Some Scholars date it back to the Commencement of the Christian Era. It is further believed that the God Vithoba or Vithal was pleased with the devotion of Pundalik and, therefore, he appeared in Pandharpur before him and made His continuous presence felt in Pandharpur to His devotees. This has been characterised as a great boon conferred by the God to Pundalik. This is reflected in the various common invocations of the Warkaris and also the Artis sung at the time waving of lights. The plffs. Affirm that the entire Institution surrounding the Vithal temple is connected with Bhakti MARG. It may be noted that this Bhakti MARG may have found some recognition in the Vedas. However, it was not uniformly followed in Hindu Religion or in Budhism. The cult of Vithoba has a distinguishing feature namely, Bhakti or devotion which all the devotees exhibit in the faith that as in the case of Pundalik the God Vithoba grants the desire to the devotees who offer Him the prayers. This was undoubtedly considered as a path towards the achievement of the realisation of the God. The Bhakti Marg which is also known as Bhakti Sampradaya was followed by the entire sect of devotees known as the Warkaris in and around Pandharpur. One of the most ancient imperative practices for a Warkari was to pay a visit to P'pur and devote himself to God Vithoba. In course of time more imperative practices relating to the worship of the said God sprang up and these practices constitute a part and parcel of the functions and rituals performed by the Pujaris of God in the famous Pandharpur temple. The plaintiffs affirm that these practices constitute a part of the cult of Warkaris and integral part of the Religious Denomination."

"6. The plaintiffs affirm that the principles practices and philosophies of the Warkari Panth which were simple in its form and ritualistic observances caught imagination of a large number of Devotees bringing forth into existence an unique and separate Institution surrounding the temples at Pandharpur. This Warkari Panth of Maharashtra maintains its distinctive individuality and therefore, the Bhakti Dharm as understood in Maharashtra began to express and present its distinct features. The special features which had grown around the cult attracted a number of Scholars from various parts of the country. The plaintiffs submit that even if Bhakti Marg may be common to a

number of philosophies and religion, it would not mean that the Religious Denomination of which the Sevadharis and Utpats, etc. are an integral part does not constitute separate and distinct Religious Denomination. Even though there may be a number of basis features common to number of Religious and Philosophies, yet their distinctive individual characteristics are still sought to be protected by the relevant provisions of the Constitution (Articles 25 and 26 of the Constitution of India). The plaintiffs affirm that the fact that there may be basis similarities in various Denominations or the fact that the object may be identical, does not mean that they are not of common denomination. The fact that some of the non-Warkaris also worship the deities would not destroy the character of the Institution as a Religious Denomination."

"7. The State of Maharashtra appears to have proceeded on an erroneous assumption while enacting the Pandharpur Temples Act, 1973, that the temples of Shri. Vithoba and Shri. Rukmini and other Parivar Devatas at Pandharpur and the followers of the deities therein do not constitute a Religious Denomination. The fact that others come and worship at the temple is not derogatory of its character as a Religious Denomination, as it would not be in general consonant with Hindu philosophy that any worshipper should be turned away. The Religious Denomination practices connected with the said Vithoba temple are not merely matters of Doctrine and belief pertaining to the Religion but also to the practice of it, that is to say, not merely Dnyan but also its Bhakti and Karmakandas. It is clear from a historical survey of the growth of Hindu Religion that with the growth of matters of temples and of worship therein more and more attention came to be devoted to the Ceremonial Law, to the construction of temples, installation of idols therein and conduct of worship of the deities. The plaintiffs submit that the ceremonial practices pertaining to the temples relating to questions, such as who are entitled to enter into them for worship and where they are entitled to stand and worship and in what manner and with what implements and in what sequence the various stages of the worship have to be carried out, are all matters of Religion."

"8. ..... For Centuries Pandharpur has moulded the character of people in Maharashtra and the message of equality based on spirituality has been a significant contribution Warkari Panth to the World Thought. The Vithal temple has inspired a

great dynatic Religious Movement promoted by Sant Dnyaneshwar and given final shape bny Sant Tukaram and is even today a potent force for good throughout Maharashtra. The routine in the temple is imitated throughout Maharashtra. In the Bill as introduced in the Council it was provided that the Committee shall ensure the continuance of the Nitya or daily or Naimitik or occasional services in the temple as was followed immediately before the appointed day". The dissenting Members were opposing to entrust the mode of worship to the Committee to be appointed under this Act. They opined that daily Puja must continue in its old Form and they were not prepared to curtail either Kakada Arati in the early morning or Shodshopachar Puja with Vaidik MANTRAS. Naivedya and Shejari. Rules of cleanliness and purity were strictly to be followed in all these Religions Performances and they opined that they should be included in the Act. They boldly and truly opined that these matters are not to be entrusted to the Committee. Nitya Pujas should be incorporated in the Act itself. The committee may then be empowered to appoint suitable persons to perform the Puja."

"9. The plaintiffs, therefore, affirm that the various functionaries at the said temple including Pujaris and the practices with respect to ceremonies all together constitute a Religious Denomination. The Preamble of the impugned Act indicates that it was intended to provide for the abolition of the hereditary rights and for the acquisition of such rights and privileges and for better administration and governance of the temples, etc. The plaintiffs affirm that the Act goes much beyond the professed declaration made in the preamble of the said Act and violates the fundamental rights of all the Functionaries in the said Pandharpur temple inclusive of the Pujaris under Articles 19(1) (f), 19(1)(g), 25 and 26 and 31 of the Constitution of India. The plaintiffs further affirm that under the guise of management the said Act interferes with the Religious affairs and matter as Denomination. Pujaris have enjoyed over a long period of history a right to receive offerings at the temples and this right has been recognized by Courts of law and Rules like Rajas of Satara and Peshwas of Poona."

"15. The said Act is violative of Articles 25 and 26 of the Constitution of India also which guaranteed the matters relating

> to rituals and observances, ceremonies and modes of worship which are integral part of the Religion. As stated above, Pandharpur Temples of God Vithal and Goddess Rukmini and other Parivar Devatas with all their religious observances including rituals and religious practices therein constitute a Religious Denomination and as the said Act takes away and materially affects Religious observances, etc., it is violative of Articles 25 and 26 of the Constitution of India. Rights to freely profess and practices and to protect Religious Tenets connected with Warkari Sampradaya and Bhakti Marg associated with the Pandharpur Temples are seriously interfered with by the various provisions of the Act. The rights to manage the Religious Institutions and to manage its affairs in matters of religion are seriously interfered with, on grounds which have no relation with public order, Morality and Health. By the abolition of the Functionaries and their rights to perform the various functions in the same temples, the State of Maharashtra has interfered in matters of religion within the meaning of Article 26(2) of the Constitution as well as under Art.25 of the Constitution. The appointment of the committee under the Act which the hereditary rights of Pujaris and other functionaries are to vest, is also destructive of the essential characters of the Religious Denominations, of which Pujaris are competent part and parcel and so, the impugned Act is violative of Articles 25 and 26 of the Constitution. It is also violative of Article 24 of the Constitution."

78. In the Plaint filed for and on behalf of *Utpats,* in the averments up to Paragraph 6, general reference is made to the historic events up to the passing of the impugned Act. With regard to the claim under Article 26 of the Constitution, averments can be found in Paragraph 7 onwards, which read thus:

> "7. The plaintiffs submit that the various services which the utpats are rendering in the temple of Shri. Rukmini Devi

constitute an integral part of the Religion and its tenetes as practised at Pandharpur in the said temples of Shri. Rukmini and Parivar Devatas. The temples of Shri. Vithoba and Shri. Rukmini are Denominational temples. The properties and income thereof are the properties of Religious Denominations and that the institution of the Utpats and the various rituals and ceremonies performed by the Utpats constitute and integral part of the Religious Denomination. The plaintiffs affirm that the connection of the various functions like the Utpats in the temple of Shri. Rukmini Devi is lost in antiquity. The plaintiffs further affirm that the connection of the Utpats with the said temple is very much intimately interwinned with the origin, development and survival of the said temple and the religious practices followed in the said temple. The plaintiffs further affirm that the founding of the various temples with which the Utpats are concerned are connected with one Pundalik who was a devotee of God Shri. Vishnu (a form of Vithoba). The dates of birth and demise of Pundalik are uncertain. But it appears that he was somewhere before the Seventh Century A.D. It is believed by all that the God Vithoba or Vithal was pleased with the devotion of Pundalik and, therefore, the God Vithoba appeared in Pandharpur and made His Continual Presence felt in Pandharpur to His said Devotees. This has been characterized as great boon conferred by the God to Pundalik. This is reflected in various common invocations of the Warkaris and also in the Aratis sung at the time of waving of lights. The plaintiffs affirm that the entire institution surrounding the God Shri. Vithal or Vithoba and Goddess Shri. Rukmini and the Parivar Devatas of both these deities is connected with Bhakti Marg. Even though Bhakti Marg may have found some recognition in the Vedas, it was not necessarily followed uniformly in the Hindu Religion or in Budhism. The cult of Vithoba has the distinguishing feature, namely, the Bhakti or devotion, which all the devotees exhibit in the faith that as in the case of Pundalik the God Vithoba grants the desire to the devotees who offer him the prayers. The Bhakti Marg which is popularly known as Bhakti Sampradaya is being followed by the entire sect of devotees known as Warkari in and around Pandharpur. One of the most ancient imperative practices for a Warkari is a visit to Pandharpur and devotion to God Shri. Vithoba and Goddess Shrui. Rukmini. In course of time, more imperative practices relating to the worship of the said God and Goddess sprang up and these practices constitute a part and parcel of the functions and rituals performed by the Utpats in the

temple of Shri. Rukmini and other Parivar Devatas. The plaintiffs affirm that these practices constitute a part of the cult of Warkaris as an integral part of the Religious Denomination. The plaintiffs further affirm that even though Bhakti Marg may be common to number of Philosophers and religions, still the Bhakti Marg as practised at Pandharpur is a separate Religious Denomination."

"8. ..... The plffs. Affirm that the Utpats and other functionaries of the Shri. Rukmini temple and other Parivar Devatas therein and the said temples themselves along with the various practices associated with the worship of the said temples together constitute a Religious Denomination. The Religious Denomination practices connected with it are not merely matters of doctrine and belief pertaining to the religion but also to the practice of it, that is to say, not only Dnyan but also its Bhakti and Karmakandas. The plaintiffs affirm that it is clear from the historical survey of the Hindu religion that with the growth of matters of temples and the worship therein, more and more attention came to be devoted to the ceremonial law relating to construction of temples, installation of idols therein and the conduct of the worship of the deities. The plaintiffs affirm that the ceremonial practices pertaining to the said temples relation to questions, such as, who are entitled to enter into them for worship and where they are entitled to stand and worship and where they are entitled to stand and worship and in what manner and with what implements and in what sequence the various stages of worship have to be carried out, are all matters of Religion. Even dissenting members of the select committee appointed by Both Houses of Legislate of the State of Maharashtra have observed as follows :

"The majority decision of the Select Committee is to entrust the mode of worship to the Committee and hence, they have amended Schedule 'A' which had given details of the daily Puja. We are opposed to entrust thus to the Committee. Daily Puja must continue in its old form. We are not prepared to curtail either Kakada Arati in the early morning, Shodshopchar Puja with Vaidik Mantras, Naivedya and Shejarati, rules of cleanliness and purity have to be strictly followed and have to be included in the Act. We are not prepared to entrust this important matter to the Committee. Nityapuja has to be incorporated in the Act itself. The Committee may then be empowered to appoint suitable persons to perform the Puja."

These observations clearly support the plffs. and other Utpats' say that the various functionaries at the said temples and the practices with respect to ceremonies together constitute a Religious Denomination."

"9. ..... The plaintiffs affirm on behalf of the Utpats that, in fact, the said Act goes much beyond the professed declaration made in the Preamble and violates the plaintiffs' and Utpats' fundamental rights under Articles 19(1)(f), 19(1)(g), 25, 26 & 31 of the Constitution of India. The plaintiffs further affirm that the said Act also purports under the guise of management, to interfere with the religious affairs and matters of Denomination. As stated above, the Utpats' right to receive offerings at the said temples has been accepted and also judiciously recognized. Similarly, their right to perform religious duties in the temple of Shri Rukmini and other Parivar Devatas and to be in the management of the said temples and deities have also been accepted and judicially recognized and so, these rights of the Utpats constitute their property within the meaning of Articles 19(1)(f) and of the Constitution of India. The said Act makes various provisions with respect to matters connected with secular and non-secular affairs of the temples, with the result that they take away the fundamental rights of the Utpats to property and religion."

"11. Articles 25 and 26 of the Constitution of India are not limited to matters of doctrine or belief and, therefore, they contain guarantee related to rituals and observances, ceremonies and modes of worship which are an integral part of the Religion. The ancient documents and the various decisions referred to above show that the Religious Denominations pertaining to Pandharpur Temples affected by the said Act in general and the temples of Shri. Rukmini and other Parivar Devatas in particular, are hit by the said Act. This Act is also clearly violative of Articles 25 and 26 of the Constitution of India and so, the said Act is void. The said Act also, besides affecting the non-religious
affairs, affects religious affairs and so, the said Act is entirely void, as it is violative of Articles 25 and 26 of the Constitution."

"12. ..... Similarly, the right of the Utpats to manage the said

> religious institution and to manage its affairs in matters of religion has been seriously interfered with on grounds which have no relation to public order, morality and health. Matters of religion within the meaning of Article 26, Clause (2) of the Constitution cannot be interfered with. Similar rights and privileges pertaining to them and enjoyed since long by the Utpats cannot be taken away, as this has been prohibited under Articles 25 and 26 of the Constitution of India. The Act takes away these rights and so is void under these Articles also, as mentioned above."

79. The State contested the claim of the priestly classes that the temple was a religious denominational temple or that the priestly classes form singularly or vicariously religious denomination or any section thereof. Both the parties not only relied on oral evidence, but also adduced documentary evidence. The Trial Court considered the issue as to whether the temple was a religious denominational temple or for that matter, the priestly classes were religious denomination in its Judgment from Paragraph 48 onwards. The Trial Court first noted the historical background of the temple and the deities as well as *Bhagvad Dharma* and *Warkari Panth* which had grown around the temple of God *Vithoba*. The Trial Court on the basis of material before it noted that the historic background regarding the origin of the

temple and the deities has been lost in antiquity. The Trial Court has then adverted to the legends connected with the temple and the material to support the same. In Paragraph 54, the Trial Court has noted that it is not disputed that *Bhagvad Dharma* has grown around the temple of God *Vithoba*. It then proceeded to examine the philosophy of *Bhagvad Dharma* to ascertain whether it constituted religious denomination. The Trial Court then proceeded to note that the *Warkari Panth* is not the same as *Bhagvad Dharma*. The *Warkari Panth* believes in *adwait* philosophy called *Warkari Sampradaya.* Reference is made to book by Principal Dandekar which supports this position. Reference is also made to other books about the teachings on *bhakti marg* of various saints. In Paragraph 60, the Trial Court proceeded to observe that saints who have preached *Bhagvad Dharma* were belonging to all communities, castes, creed and sects, for instance, *Dnyaneshwar* was *Nagpanthi*. *Dnyaneshwar* was *guru of Eknath Maharaj*, who belonged to *Datta Sampradaya.* It also took into account the material on record which was suggestive of the fact that saint Kabir, Sajjan Kasai, Narsi Mehta, saint Meera, saint

Supra Bhatt, all belonging to different sects have preached God *Vitthal*. Reference is made to Shankaracharya (8th century), who had composed *Ashtak on Pandurang*, which has been recognized by *Shingeri Peeth* as composed by Acharya. After making reference to these literatures, the Trial Court proceeded to consider the case of the priestly classes from Paragraph 62 of the Judgment. It then referred to the Madras High Court's decision in the case of **Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt & Anr. v. The Commissioner, Hindu Religious Endowments, Madras & Ors. (Dikshitar's case) reported in AIR 1952 Mad. 613**, and the Supreme Court Judgment by seven Judges' Bench in **Shirur Mutt's Case (supra).** Drawing analogy on the principle stated in the said decisions, the Trial Court proceeded to examine the claim of priestly classes in paragraphs 65 onwards of its Judgment. It has noted that admittedly, the origin of the *Badves* and the *Utpats* is not known, but *Sevadharis* became associated with the temple of God *Vithoba* after the *Badves*. The Court then analyzed the evidence of PW 1 Narayan Rao Badve. It held that he has not spoken about the origin of the

Badves. Then the Court proceeded to analyse the evidence of Vasudeo Utpat (PW 1) and noted that in the cross-examination, this witness admitted that there is no support from any scriptures to show that Sudeo Brahman was their ancestor. It has found that the origin of the priestly classes was not known. It then proceeded to consider the contention in the context of Section 114(t) of the Evidence Act. It has, however, found that backward presumption of community or association of *Badves* with the temple of God *Vithoba* cannot be drawn as the temple or the deity is in existence from 5th or 6th or at least 8th century. Whereas, the oldest document on record produced by *Utpats* are *Bijapur* and *Indapur* sculptures (*Exhibits 71 and 72* in R.C.S. No.541/76), these documents pertain to 15th Century. It then observed that if backward presumption is to be drawn, then there would be presumption of hundreds of years which is not permissible. It then proceeded to hold that peculiar characteristics present in *dikshitas* referred to in the reported decision were absent in priestly classes in the case on hand. It has then found that the *Badves*, *Utpats,* and others are not close communities. More over, they are permitted to marry from any

outside families. They are not prohibited from taking any other avocation. Admittedly, some of the family members of *Badves, Utpats* and others are Government servants and also engaged themselves in other business activities. Essentially, the characteristics discussed in the reported Judgment in relation to *dikshitas* was compared with that of the priestly classes on hand to conclude that there was complete dissimilarity on all points. In Paragraph 69, the Court went on to examine the argument that it would not be proper to draw comparison with *dikshitas;* whereas, the Court was required to examine only four things to ascertain the claim of religious denomination namely:

(1) collection of individual classes together under the same name;

(2) common faith;

(3) common organization; and

(4) designated by distinctive name.

80. The Trial Court then proceeded to analyse the reported decision in the case of **Shirur Mutt (supra)** and in Paragraph 70,

found that in the instant case, the *Badves, Utpats and Sevadharis* were certainly not *Mathadipatis* nor it was their case that temple of God *Vithoba* was established as an institution by some person or a saint, that they are followers of such person. Referring to other reported decisions, in Paragraph 80, the Court has noted that considering the historical background of the Pandharpur Temples, the philosophy of *Bhagvad Dharma* so also the practice of *Warkari* cult, it cannot be said that *Badves, Utpats and Sevadharis* are collection of individuals, who have a system of beliefs or doctrines, which they regard as conducive to their spiritual well being i.e. a common faith. It has found that there are many persons in the priestly classes who follow *Bhagvad Dharma* and practice. That the names of priestly classes, *Badves, Utpats and Sevadharis* are their surnames. They merely belong to a particular caste and Hindu religion and worship a particular deity. In Paragraphs 80 and 81, the Trial Court observed as follows:

> "80. ... To my mind, after considering the historical background of the temples, the philosophy of Bhagwat Dharma, so also the practice of Varkari cult, it cannot be said that the Badves the Utpats and the Sevadharis are a collection

of individuals who have a system of beliefs or doctrines which they regard as conductive to their spiritual well-being i.e. a common faith. There are many persons besides the priestly classes who follow Bhagwat Dharma and practice it. Names of the Badves, the Utpats and the Sevadharis are their surnames and they merely belong to a particulars caste of Hindu religion and worship a particulars deity. In the Badves, it cannot be found that they are a collection of individuals who have a common faith, likewise in the Utpats and the other sevadharis. Secondly, the plaintiffs have also not formed a common organisation and thirdly, they are not designated by a distinctive name. Unless these three conditions are satisfied, it cannot be said that the plaintiffs in all the suits separately form a religious denomination.....

81. It is also a matter to be considered as to what exactly the plaintiffs do in relation to the temples. According to the Badves, they are the managers and overseers of the temple of God Vithoba. For performing religious rites, there are separate seven Sevadharis. As regards the case of the Rukmini temple, the Utpats are managers and they themselves perform religious rites. None of the plaintiffs propagate philosophy of Bhagwat Dharma a but they only perform religious rites as pleaded that the religious rites as pleaded that the religious rites constitute religious denomination the arguments are also advanced on these lines. However, in view of the principles enunciated in the ruling the same cannot be accepted."

In Paragraph 83, the Trial Court noted thus :

"83. Thus, it is seen that origin of the temples of God Vithoba and Goddess Rukmini is not known. So also, origin of the Badves, the Utpats and the Sevadharis is not known. Further, around the temple of God Vithoba, Varkari cast, philosophy of Bhagwat Sampradaya is developed and it was flourished from the time of Dnyaneshwar. It is also seen that Bhagwat Dharma is not distinct from Hindu Dharma. There is no particular saint who could be considered as founder of

> Bhagwat Dharma of Varkari Sampradaya. Therefore, there is no organisation of that cult. It also cannot be said that both the temples, i.e. temples of God Vithoba and that Goddess Rukmini, were founded to preach Bhagwat Dharma or to propagate varkari cult. ..... The facts in the instant cases are quite different, then the fact in the Dikshitars case referred to above. Further, the position of the Badves and of the other plaintiffs is not like that of a Mathadhipati or Dharmakarta which was the position of the petitioner in Shirur math case. Bhagwat Dharma of Varkari cult is not distinct from Hindu Dharma and even if it is distinct, at all the plaintiffs in the instant cases are certainly not an organisation of Bhagwat Dharma or Varkari cult and lastly, the plaintiffs are not designated by a distinctive name. I therefore, considering all these facts and judging the case of the plaintiff from all possible angles, conclude that none of the plaintiffs forms or constitutes a religious denomination within the meaning of articles 26 of the Constitution, nor could it be said that the plaintiffs are sections of a religious denomination because no religious denomination exists."

81. When the matter was taken up in Appeal by the three priestly classes, the Appellate Court has threadbare considered the relevant materials to answer the issue against the Plaintiffs. The findings reached on the basis of analysis of such evidence are interspersed, while answering the point in issue in the context of Article 26 of the Constitution, from Paragraphs 109 to 118 of its Judgment in Appeal filed for and on behalf of *Badves*. The Appellate Court first noted that the Plaintiffs have not contended that the temple of God *Vithoba* at Pandharpur is a denominational temple.

It has held that in fact it is admitted that it is a public temple. It then proceeded to examine the purport of expression `religious denomination'. While doing so, reference is made to averments in the Plaint wherein it is alleged that the religious, secular and all affairs pertaining to temple of God Shri *Vithoba* and his *Parivar Devatas* are exclusively conducted, performed and arranged by the *Badve* community at Pandharpur from ancient times; That *Badve* community is divided in four *Takshims* (branches), namely; (1) Shamraj, (2) Timman, (3) Malhar and (4) Tanaba. It has then noted the claim of *Badves* that they form a class of pious, well versed and devoted *Brahmins* and they belong to the *Kashyap Gotra* in *Kanwa Shakha* of *Yajurved;* Their principal occupation is service of God *Shri Vithoba* and his *Parivar Devatas* and they formed a well knit and exclusive group of close community; That *Badve* community is hereditarily in-charge of religious and secular affairs of the temple of God Shri *Vithoba* and his *Parivar Devatas* from time immemorial; That *Badveship* is *vritti* and the exercise and enjoyment of *Badves, vritti* is strictly restricted to the male members

of the *Badve* community; That for carrying on the various religious, daily and occasional services of God Shri *Vithoba*, the *Badves* are associated by seven classes of hereditary subordinate priests known as *Sevadharis* namely, *Pujari, Benari, Paricharak, Hardas, Diwate, Dingare and Dange;* That *Badves* bid the *Sevadharis* to attend to their respective duties in the performance of religious services which are carried out meticulously under their supervision, control and directions. The Appellate Court has then adverted to the activities performed by *Badves* in relation to the deity, Vithoba and his *Parivar Devatas* in the context of averments made in the Plaint filed by *Badves*. The Appellate Court then proceeded to examine the oral evidence of Plaintiffs from Paragraphs 119 and other three witnesses in Paragraph 125. The Appellate Court was also cognizant that besides oral evidence, Plaintiffs were relying on documentary evidence relating to the rights recognized by the then rulers and decided by different Courts on different occasions. From Paragraph 127 of the impugned Judgment, the Appellate Court proceeded to consider whether the Plaintiffs qualified the expression "religious denomination". The first aspect considered

by the Appellate Court is: whether the Plaintiffs were a collection of individuals, classed together under the same name, specially a religious sect or body having a common faith and organization and designated by a distinctive name. It has noted that the expression `religious denomination' used in Article 26 of the Constitution is not merely on the basis of caste or sub-caste of a Hindu religion. What is to be seen is how the sect or sub-sect of Hindu religion was formed on the basis of their religious denomination. The Appellate Court in Paragraph 127 has noted the stand taken on behalf of Plaintiffs before it that they do not claim to constitute a religious denomination because they belong to a particular sub-caste. The Appellate Court then proceeded to consider the claim of Plaintiffs being religious denomination on the assumption that besides the Plaintiffs, no other person has conducted *pujas* or *sevas* of the deity since time immemorial. The Appellate Court has noted that it is not the contention of the Plaintiffs that they together with the seven *Sevadharis* constitute a religious denomination. It has noted that in fact, the seven *Sevadharis* claim to constitute religious denomination in their own rights. In Paragraph 128, the Appellate

Court concluded that the Plaintiffs do not constitute religious denomination "by reason of their caste or sub-caste". The Appellate Court then proceeded to examine whether the Plaintiffs (*Badves)* had distinct common faith and common spiritual organization and the belief in a particular religious teacher or philosophy. For this, the Appellate Court adverted to the averments in the Plaint as well as the oral evidence of P.W.1 Narayan Badve. The case made out was that the practice adopted by *Badves* at the temple are the integral part of the religion namely; *Bhagvad Dharma* and *Badves* have faith in it; that *Sampradaya* of *Badves* is known as *Bhagvad Sampradaya* or *Vitthal Sampradaya.* The Appellate Court proceeded to note the history relating to the temple in question. It is noticed that there are two distinct elements in the cult of God *Vithoba* associated with the temple. The one is ritualistic worship carried on by the *Badves* and the spiritual worship patronised by *Warkaries.* The *Warkaries* are also followers of *Bhagvad Dharma*. It has then noted that it was not necessary to find the distinguishing features between the two and confine the enquiry limited to the issue whether the ritualistic worship carried

out by *Badves* was of any avail to it. After referring to different types of *sevas* undertaken by *Badves*, which according to them was the core of *Bhagvad Dharma* and constituted religious denomination, the Appellate Court proceeded to consider that plea. It has noted that the various *pujas* performed by the Plaintiffs with the assistance of the seven *Sevadharis* are as per *Agamashastra*, which are commonly followed in every temple. They cannot be styled as special characteristics, on which basis, Plaintiffs can be distinguished to constitute a religious denomination. It has then referred to the services offered by *Badves* to the devotees. The devotees can perform *puja* after *Badves* negotiate on their behalf with *Sevadharis*. It has noted that this can hardly be treated as a kind of *bhakti*. As in any type of *bhakti*, intervention of any other person is not necessary. It has then noted that similarly, supply of *puja* material in return of some amount, would also not amount to *bhakti*. It then proceeded to hold that various ritualistic worship carried on by the Plaintiffs, can hardly be styled as a spiritual worship. It has found that the ritualistic worship performed by *Badves* was as a means of their livelihood; whereas, the concept of

bhakti contemplated by *Bhagvad Dharma* was devotion towards God, free from any expectation or desire. On this basis also, the Appellate Court proceeded to negate the claim of *Badves* as constituting religious denomination. While referring to the evidence of Plaintiffs' witness Narayan Dattatraya Badve, the Appellate Court noted that the intrinsic suggestion in the evidence was that *Badves* were also followers of *Warkari Sampradaya*. The Court has found that this was a new case and departure from their original claim of ritualistic worshippers of the deity. It has then briefly adverted to the activities performed by *Warkaries* and noted that *Warkaries* do not believe in ritualistic worship as carried on by Plaintiffs. The Plaintiffs *(Badves*) were engaged in ritualistic worship of the deity. The Appellate Court has then considered the claim of *Badves* about the custom of *Tulsi Mala* being given to devotees. In this behalf, it has found that there was nothing on record to show that any of *Badves* was ever authorised to give such *Tulsi Mala*. It has then noted that the leader of a *Fad* is authorised to give such *Mala* to his disciples and Plaintiffs *(Badves*) do not claim that they are leaders to any *Fad*. It thus rejected the claim of the Plaintiffs

that they were section of the followers of *Bhagvad Dharma* as a *Warkari.* The Appellate Court then referred to ***Dikshitar' s case (supra)*** and the decision of the Apex Court in the same case known as **Shirur Mutt' s case (supra)**. After extensively referring to the principle stated, it proceeded to consider whether distinctive characteristic noted in those decisions in the case of Dikshitars were present in the case of *Badves*. In Paragraph 148, the Appellate Court has culled out the reasons to negative the claim of the Plaintiffs *(Badves*). It has observed that there was no evidence about the foundation of the temple and the purpose of the foundation; the Plaintiffs *(Badves)* do not claim to have founded the temple; that there was no evidence that the Plaintiffs *(Badves*) were brought and settled at Pandharpur; that there was no common religion, much less, a divine origin in the case of *Badves* - the legend of *Pundalika* connected with the temple of God Shri *Vithoba*. It is believed that when the God was pleased with the devotion of *Pundalik* to his parents, the God asked him to choose boon and *Pundalik* prayed for eternal presence of the God at Pandharpur. That *Badves* have no equal rights and widows are also entitled to

succeed to the income of *vritti*. The right to participate goes by succession and acquired by birth. It has come in evidence that in the community of Plaintiffs *(Badves*), marriages of males and females take place from families outside the community, for which reason, it cannot be said that their community was a closely held community. It has then noted that no special "diksha" or initiation is required for the members of the Plaintiffs *(Badves*), nor there is anything on record to show that a member from the *Badve* community is required to undertake any particular type of training before acquiring the right of participation in *sevas* and *pujas*. The Plaintiffs' witness Narayan Badve has admitted that he had no knowledge about the *mantras* which are recited at the time of *pujas* and that he has not memorised the *mantras* recited at *Kanva Shakha*. That although *Badves* claim that offerings in the temple is their main source of income, it is in the evidence that the members of *Badve* community are not prevented from taking other avocation and earning income therefrom. The witness admitted that there are doctors, advocates, traders and Government Employees in *Badve* community and even such persons are receiving share in

vritti without doing any services in the temple and although they are residing outside Pandharpur. That there was no evidence to show that the income derived from the offerings before the deity was the principal source of income of *Badves*. Lastly, but more importantly, it is noted that the *pujas* in the Pandharpur temple are performed according to the *Agamashastra* which are common to all Hindu temples. Essentially, on these basis, the Appellate Court proceeded to negative the claim of *Badves* as constituting a religious denomination or section thereof. In Paragraph 150, it has noted that to avail of the protection under Article 26 of the Constitution, it is essential to prove that there is a group of persons having common faith and tenets, which are distinguished from the others. To put it differently, it has observed that it has to be proved that there is a common organization for spiritual purpose. However, from the evidence on record, the *Badves* had failed to prove that they had common faith or tenets which can be distinguished from others. It has noted that the kind of *bhakti* on which the *Badves* rely is common belief entertained by all and is not restricted to the Plaintiffs (*Badves)*. It has further observed that

the manner of *puja* performed at the temple of God *Vithoba* is according to *Agamashastra,* which is common to all Hindu temples. That during the various rituals, *Badves* are assisted by different *Sevadharis*. It has then noted that the role of *Badves* as admitted by them, during the rituals, is to supply all the necessary and requisite *puja* materials and articles for rituals and ensure that rituals are complete in all details and the *Sevadharis* perform their part during the rituals meticulously under their directions. That at the highest, the Plaintiffs (*Badves*) were the managers and overseers and aptly defined as chief priests of the temple. The Appellate Court then noted that it was intriguing as to why three different bodies were formed by *Badve* community, namely; the Badve Committee, the Samasta Badve Mandal and the Samasta Badve Samaj. These three bodies are directly or indirectly dealing with the affairs of *Vithoba* temple and his *Parivar Devatas* inspite of the Committee constituted by the High Court as per its Scheme of 1896. The Appellate Court observed that the purpose for forming such bodies was only for secular aspects, namely, sharing of *dakshina* and not for any spiritual purpose. The Appellate Court

accordingly proceeded to affirm the finding recorded by the Trial Court that Plaintiffs (*Badves*) did not constitute religious denomination. In the latter part of its Judgment, while considering the second limb of the question as to what are matters of religion, the Appellate Court has made reference to cases cited across the bar reported in ***AIR 1968 SC 662 – I.S. Azeez Basha & Anr. v. The Union of India, Shirur Mutt's case (supra), Nathdwara Temple's case (supra), Sri Venkataramana Devaru (supra), His Holiness Sriman Perarulal Ethiraja Ramanuja Jeeyar Swami Etc. v. The State of Tamil Nadu (AIR 1972 SC 1586), Kalyan Dass v. State of Tamil Nadu (AIR 1973 Mad.264), Narendra Prasadji Anandprasadji Maharaj (supra), Ratilal Panachand Gandhi (supra) and Punjabrao v. D.P.Meshram (AIR 1965 SC 1179).*** After referring to the principles stated in those decisions, the Appellate Court has negatived the claim of the Plaintiffs (*Badves)* that any of the prohibition or restriction imposed by virtue of the impugned Act interfered with religion or any activity for the purpose of religion as such. On this reasoning, the Appellate Court negatived the challenge to the provisions of the Act being violative

of Articles 25 or 26 of the Constitution.

82. As mentioned earlier, the Appellate Court by separate Judgments, decided the Appeals in three sets – one of *Badves,* the other of *Sevadharis* and the third of *Utpats.* The *Sevadharis,* namely; *Pujari, Dange, Diwate, Hardas, Paricharak, Benari and Dingre,* made almost similar claim to urge that the temples at Pandharpur were religious denominational institutions. They also claimed that in any case, *Sevadharis* constituted an integral part of the religious denomination. It was their case that *Warkari Panth* of Maharashtra maintains its distinctive individuality and that *"Bhakti Dharma"* as understood in Maharashtra began to express and present its distinct features. The Appellate Court in the first place, analysed the averments in the Plaint filed for and on behalf of *Sevadharis*. It then adverted to the written statement filed by the State, wherein, it was stated that the temples of God *Shri Vithoba, Goddess Rukmini and Parivar Devatas* were not denominational temples, so also, the *Sevadharis* do not constitute religious denomination or any section thereof. That the services rendered

by the *Sevadharis* were not integral part of the religion. That the *Sevadharis* have no connection with the cult of *Vithoba*. The cult of *Vithoba* are the devotees who directly do *bhakti* and worship and do not require any intermediary. That the different *sevas*, practices and rituals have grown because of the deed of the priestly classes as per the preaching followed by the devotees, pilgrims visiting temples at Pandharpur. They believe that *darshan* of God *Vithoba* and Goddess *Rukmini* is sufficient and that other *sevas* and ceremonies are not material for them. That the cult of *Vithoba* is nothing but universal *bhakti marg* as preached by the tenets in India. It consists of simple tenets and the essence is the offering of prayer with the sole object of God realisation without the devotee forsaking his duties and obligations, knowing very well his position in life. The Appellate Court adverted to other relevant aspects asserted in the written statement. Then it proceeded to consider the oral evidence given on behalf of *Sevadharis,* of Gopal Pandurang Benari. From Paragraph 115 onwards, the Appellate Court proceeded to consider the claim of *Sevadharis* about religious denomination. It has then found that on scrutiny of the

evidence of Gopal Pandurang Benari, it is seen that he has not stated any special characteristics or features so as to distinguish the denomination of *Sevadharis* from others. The Appellate Court then proceeded to consider the claim of *Sevadharis* that the practices adopted by them constitute a part of the cult of *Warkaries* and they are the followers of *Bhakti Sampradaya*, but proceeded to hold that Gopal Pandurang Benari has not enlightened this subject in his evidence. The Appellate Court then proceeded to examine the activities performed by the *Sevadharis*. It held that *Sevadharis* were performing *nitya* and *naimittik pujas* and *sevas* by reason of usage and custom and in view of their long and uninterrupted association with the temple. For performing *pujas*, a qualified *Brahmin* namely; a person well versed and acquainted with the mode of performing *puja* as specified in *Agmashastra* was necessary. After having said this, the Appellate Court referred to the stand of the *Sevadharis* that the *Vitthal* temple at Pandharpur was a denominational temple. This plea has been answered against the *Sevadharis* in the light of the legal position stated by the Constitution Bench of the Apex Court in the case of **Sri**

Venkataramana Devaru (supra). The Appellate Court has extracted the relevant principle stated in the said Judgment and proceeded to hold in Paragraph 119 that the *Sevadharis* had not produced any deed of endowment to show that the dedication was for their benefit. Moreover, there is no evidence to show that the temple has been established by the *Sevadharis*. Similarly, it has further found that it is not the claim and contention of the Appellants that the temple has been established by the head of a religious group, having common faith and tenets to which they belong for their benefit. The Appellate Court has noted that the origin of the temple of Shri *Vitthal* is lost in antiquity. The Appellate Court proceeded to hold that the evidence on record does not prove that the religious faith or tenets entertained by the *Sevadharis,* form a group or class as distinguished from general Hindu philosophy. The Appellate Court has positively found that the important characteristic established that a temple of God *Shri Vithoba* did not belong to a particular class or group but to all those who have devotion and consequently to the entire public. The devotees believe in *Padasparsha darshan* which is unique in itself

and which is not found in most of the Hindu temples elsewhere. It is found that this practice of placing head on the feet of the deities by actually touching them, has been admittedly exercised by the devotees from times immemorial. In the earlier times, the devotees used to embrace God *Shri Vithoba* but as the idol was damaged on one occasion, the devotees started taking *darshan* by placing head on the feet of the deity. The Appellate Court has found that *Vitthal* temple at Pandharpur is not a denominational temple founded for the benefit of *Sevadharis*. It has noted that admittedly, the *Sevadharis* do not claim that they are the owners of the temple and its property. Out of the *Sevadharis, as* observed the Appellate Court, *Pujari and Benari* alone can be styled as *Archakas* and the rest are servants or attendants of the God. It has also noted that *Sevadharis* do not have any right in the management of the temple or its property. The only right asserted by them was to remain present during the *sevas* and *pujas* and officiate. The Appellate Court therefore found that merely because the *Sevadharis* are associated with the *Vitthal* temple since long, that by itself, will not make the temple a denominational temple. It has further found that

the activities performed by the *Sevadharis* were one of ritualistic worship and the spiritual worship is patronised by *Warkaries*. The Appellate Court has also found that although the *Sevadharis* claim that they are the followers of *bhakti marg*, which is popularly known as *bhakti sampradaya*, the devotion or *bhakti* as followed by them differs from that of *Warkaries,* who are the followers of *Bhakti Sampradaya*. It then proceeded to consider the claim of *Sevadharis* that the practices adopted by them in performing the *pujas* and *sevas* of deity constitute a part of cult of *Warkaries* and it is an integral part of their religious denomination. The Appellate Court has found that there is no evidence that the practices adopted by *Sevadharis* at the temple were integral part of their religion *Bhagvad Dharma* and also that *sampradaya* of *Sevadharis* is known as *bhakti sampradaya.* That no evidence is forthcoming as to the special features of the said *Sampradaya*. The Appellate Court has then noted that there are two distinct elements in the cult of *Vithoba* associated with the temples. One is ritualistic worship as carried on by the *Sevadharis* and the spiritual worship patronised

by the *Warkaries*. It has then found that *Sevadharis* were conducting *pujas* and *sevas* which can be described as *nitya and naimittik sevas*. They derive their surnames on the basis of nature of *sevas* performed by them during the *pujas*. It has then found that the various *pujas* performed by the *Sevadharis* were as per *Agmashastra* which were commonly followed in every Hindu temple. That cannot be styled as special characteristic on the basis of which, the *Sevadharis* can be distinguished from other class to hold that they constitute a religious denomination. It has noted that the activities performed by *Sevadharis* cannot be treated as a kind of *bhakti*. For, *bhakti* is a talk and dialogue between the devotees and God without the services of any interpretor. The Appellate Court also considered that assuming that *Sevadharis* caused *darshan* of God to the devotees, still it would not be a *bhakti,* so far as the Sevadharis are concerned. At the highest, it will be *bhakti* of the devotees towards God. It has also noted that performing *puja* or *seva* on behalf of someone in return of some money, can never be said to be *bhakti*. *Bhakti,* on the other hand, is a kind of

devotion without any desire or wish. On this reasoning also, the Appellate Court proceeded to hold that if the *Sevadharis* were getting remuneration for the services rendered by them and worshipping the deity, that cannot be attributes of religious denomination. The Appellate Court has adverted to the evidence of witness examined on behalf of *Sevadharis* on material aspects while referring the finding on the material issue against *Sevadharis*. It has found that whenever devotee offers something at the feet of the deity, the *Sevadharis* demand *dakshina* from him and many devotees are unwilling to give such *dakshina* for the second time. The Appellate Court has found that *Sevadharis* were performing *sevas* at the temple with expectation of receiving some *dakshina* from *yajmans*, which cannot be described as *bhakti* to identify them as religious denomination or section of religious denomination. The Appellate Court in Paragraph 133 onwards, has referred to the characteristic of *bhakti marg* and the practices and tenets followed by *Warkaries*. It then proceeded to consider whether *Sevadharis* can be said to be followers of *Warakari Sampradaya*. In this context, reference is made to the extracts from the authorities on

the subject, which were part of record. It has found that saints from different castes and *panth* gathered under the banner of *Warkari Sampradaya* and helped in flourishing the *Warkari Sampradaya*. Names of such saints are noted in Paragraph 136 such as Shri Nivritti, Sant Dnyandeo, Sopan, Muktabai, Changdeo and Visoba Khechar, who were *Brahmins,* whereas, Namdeo was *shimpi* (tailor), Narhari Sonar (gold-smith), Sawanta Mali was a *Mali* (gardener), Goroba was a *Kumbhar* (Potter), Raka Vanka and Choka Mela were Mahar (Scheduled Caste) and Rohidas was cobbler by caste. It has noted that Tukaram Maharaj was *Chaitanya Sampradaya*. Nivritti and Sant Dnyandeo were *Nathpanthi* and Eknath was a *Datta Sampradaya*. It is also noted that it is firmly believed that there is a sign of *Shivling* on the head of God *Shri Vithoba,* yet there is no dispute between *Shaivats* and *Vaishnuvats*. On this reasoning, the Appellate Court proceeded to hold that it will not be improper to conclude that *Vitthal Bhakti* brought together and caused unity between *Shaivats* who are the worshippers of *Shri Shankara* and *Vaishnuvats* who are the

worshippers of *Shri Vishnu. The* Appellate Court has thus found that the practice followed by *Sevadharis* do not constitute a part of the cult of *Warkari* as such, for which reason, they do not form religious denomination. The Appellate Court has made reference to the decisions in the ***Dikshitar' s case (supra)*** and the decision of the Supreme Court in ***Shirur Mutt's case (supra).*** In paragraph 146 of the Judgment, the Appellate Court noted the characteristics found in the case of *Sevadharis* that there was no evidence about the foundation of the temple and the purpose of the foundation. The *Sevadharis* did not claim to have founded the temple. There is no evidence that *Sevadharis* were brought and settled at Pandharpur. There is no evidence that any of the *Sevadharis* were disciples of any spiritual leader of particular sect. No clear evidence was forthcoming as to whether males had equal rights and the manner in which their rights are determined. That there is no restriction amongst the *Sevadharis* from marrying outside their families. There is no evidence that *Sevadharis* are required to take special diksha or initiation to enable them to perform these services in the temples. There was evidence on record that though the

Sevadharis claim that the main source of their income was the offerings in the temple, the family members of *Sevadharis* were engaged in other profession, occupation, such as doctors, advocates, traders and Government employees. There was no prohibition from taking other avocations for their livelihood. The *pujas* in the temple were admittedly according to *Agamashastra*, which is common in most of the Hindu temples. There was no clear evidence as to whether *Sevadharis* have any autonomous machinery to exercise disciplinary powers. On this reasoning, the Appellate Court proceeded to negative the claim of *Sevadharis* to be religious denomination or section of any religious denomination. The Appellate Court has also found that *Sevadharis* failed to prove that they have common faiths and tenets, which can be distinguished from others. At the end, therefore, the Appellate Court proceeded to hold that there was no constitutional prohibition on the State to regulate or restrict the activities of *Sevadharis*, which do not form part of matters of religion. It has found that there was no infraction of the rights guaranteed under Articles 26(b) or 26(c) of the Constitution. The Appellate Court has also made reference

to the decision of the Supreme Court in the case of **Ratilal Panachand Gandhi (supra)** and also to the **Punjabrao's case (supra) t**o conclude that Section 4 of the Act does not prohibit the *Sevadharis* from entering the temple for worship or there is no restriction on propagating *Bhagvad Dharma, Vitthal Sampradaya* or the cult of *Vithoba,* which the *Sevadharis* claim to propagate.

83. Insofar as the third Judgment given by the Appellate Court in the case of *Utpats*, same approach is adopted by the Appellate Court as noted in the case of *Badves* and also *Sevadharis.* The claim of *Utpats* has been independently examined by the Appellate Court with reference to the averments in the Plaint, the evidence of witnesses examined on behalf of *Utpats* as also the documentary evidence. On analysing the evidence and referring to the reported decisions already noted earlier, it has found as of fact that *Utpats* have not proved that religious faith or tenets entertained by them is a group of a class as distinguished from the general Hindu public. It has noted that temples of *Rukmini* and the *Parivar Devatas* do not belong to a particular class or group, but to all those

who have devotion and consequently to the entire public. It has found as of fact that *Rukmini* temple is not a denominational temple founded for the benefit of *Utpats,* who are *Deshastha Rigvedi Brahmins* belonging to *Vaishishtha Gotra, Ashvalyan Sutra, Shaklya Shakha* and three *Pravars*. It has noted that *Utpats* do not claim that they are the owners of the temple and its property. They claim to be mere managers having beneficial interest in the property, namely; the offerings made at the feet of the Goddess. It has found that merely because *Utpats* are associated with *Rukmini* temple since long, their association by itself will not make the temple a denominational institution. Even in the case of *Utpats*, the Appellate Court has found that they were associated with the ritualistic worship and the spiritual worship was patronised by *Warkaries*. It has found that *Rukmini* temple at Pandharpur is a public temple and not a denominational institute founded for the benefit of *Utpats*. It has also found that from the evidence, it is seen that *Utpats* were conducting various kinds of *pujas* and *sevas* which can be described as *nitya* and *naimittik pujas.* While carrying on such *sevas, Utpats* recite *Mantras* at the time of *puja,* perform

puja, dress the Goddess, hold mirror in front of idol, bring water of *puja,* distribute *Charan Tirtha,* distribute prasad, hold silver sceptre, perform *bhajan, keertan* and recite *Puran* in the temple. The Appellate Court has found that various *pujas* performed by the *Utpats* are as per *Agamashastra*, which are commonly followed in every Hindu temple. Therefore, the same cannot be styled as a special characteristic on the basis of which the Appellants can be distinguished from other classes to hold that they constitute a religious denomination. The Appellate Court has also considered the claim of *Utpats* that they were followers of *Bhakti Marg*. According to *Utpats,* the cult of *Vithoba* has a distinguishing feature and they were followers of *Bhakti Marg,* which is being followed by *Warkaries*. The Appellate Court has found that although the *Warkari Sampradaya* has distinguishing features, so far as *Utpats* were concerned, it proceeded to reject their claim that they constitute religious denomination or section thereof. The reasons which have been spelt out in respect of *Badves* as well as *Sevadharis*, same have been applied to the case of *Utpats*. That there was no evidence about the foundation of the temple and the

purpose of the foundation. That *Utpats* do not claim to have founded the temple. That there was no evidence that *Utpats* were brought and settled at Pandharpur. That the evidence of witnesses examined on behalf of *Utpats* would admit that there is no proof to show that *Sudeo Brahmin* was the ancestor of *Utpats,* for which reason, they have failed to prove common origin. That several *Sevadharis* who are connected to the temple of God *Shri Vithoba* have filed separate proceedings, wherein each of them have claimed that they would constitute a separate religious denomination. That *Badves*, *Utpats,* and seven *Sevadharis* are from the different *Shakhas* or branches. Some of them are *Rigvedis*, some are *Yajurvedis*, some are *Madhyandin* branches of *Deshastha Brahmins*. They have all different *Gotras*. That the males have no equal rights. The right to participate in the activities goes by succession under Hindu Law, which is acquired by birth. That there was evidence that the marriages of males and females from *Utpats* family have taken place from families outside the community. To put it differently, the *Utpats* cannot be said to be constituting a close community. That there was evidence that no

special *diksha* or initiation was required for the *Utpats* to enable them to perform services in the temple, nor the member from *Utpats* community was required to undertake any particular type of training before acquiring right to perform *sevas* and *pujas,* which right was acquired by birth in the family. It has also found that although *Utpats* claim that their main source of income was from offerings made in the temple, but there was evidence that the *Utpats* community was not prohibited from taking other avocations such as advocates, doctors, traders, workmen, employee or Government employee. In that sense, the offerings in the temple was not the principal source of income. That the *pujas* in the Pandharpur temple were performed according to *Agamashastra*, which is common in most other Hindu temples, for, *Utpats* do not have autonomous machinery to exercise disciplinary powers. Taking overall view of the matter, the Appellate Court affirmed the view taken by the Trial Court that *Utpats* do not have any special characteristic so as to hold that they constitute a religious denomination or section of any religious denomination.

84. The Counsel for *Sevadharis* invited my attention to the decision in the case of **A.Ramaswamy Dikshitulu & Ors. v. Government of Andhra Pradesh & Ors. reported in (2004) 4 SCC 661.** According to him, the question regarding the principles expounded in the case of **A.S.Narayana Deekshitulu v. State of Andhra Pradesh reported in (1996) 9 SCC 548** regarding the protection under Articles 25 and 26 of the Constitution are pending reconsideration before a larger Bench of the Apex Court as the same is not consistent with the earlier decision of the same Court referred to in Paragraph 3 of that decision. In my opinion, however, that would not preclude this Court from deciding the points in issue on the basis of statement of Law expounded in the

other Supreme Court decisions, in particular, Constitution Bench decisions, which are nevertheless binding on this Court. I shall, therefore, take no aid of the exposition in **A.S.Narayana Deekshitulu (supra),** while answering the points in issue, as I am convinced that the same can be decided on the basis of other authoritative decisions of the Apex Court.

85. The question that needs to be answered by this Court is: whether the finding of fact reached by the two Courts below in particular the Appellate Court needs to be interfered with? In the first place, I may record that the finding noted by the Appellate Court on the material points is on the basis of the evidence, which has come on record. The crucial question is whether the Appellate Court has applied correct legal principle in answering the point in issue. For this, we shall straightaway refer to the decision of the Constitution Bench (five Judges) in the case of **Shastri Yagnapurushdasji (supra),** which has had occasion to consider as to what is Hindu religion. The principal question considered in this case was whether the High Court was right in holding that *Swaminarayan Sampradaya* (sect) to which the Appellants belonged, was not a religion, distinct and separate from the Hindu religion, and that, the temples belonging to the said sect do come within the ambit of the provisions of the Bombay Hindu Places of Public Worship (Entry-authorisation) Act, 1956. The lower Court on analysing the evidence in that case had held that it was not

disputed before the Trial Court that the temples in suit were public religious institutions. The only question which was argued before the Court was whether they could be regarded as Hindu temples or not. According to the Appellants therein, the suit temples were meant exclusively for the followers of the *Swaminarayan* sect; and these followers, it was urged, did not profess the Hindu religion. This plea was answered against the Appellants. In the appeal before the High Court, it was urged that the followers of *Swaminarayan* sect did not profess Hindu religion, that the *satsangis* worshipping at the *Swaminarayan* temple may be Hindus for cultural and social purposes, but they are not persons professing Hindu religion, and as such they do not form a section class or sect or denomination of Hindu religion. This plea was negatived by the High Court. When the matter went before the Apex Court, the Apex Court in the first place, adverted to the legislative intention behind enactment of Untouchability (Offences) Act, 1955 and related enactments which were intended to make better provisions for throwing open of places of public worship to all classes and sects of Hindus. On the contentious issue whether

Swaminarayan sect is a religion, distinct and separate from Hindu religion, the Apex Court found that enquiry as to what are the distinctive features of Hindu religion was inevitable. From Paragraph 27 of this reported decision, the Apex Court went on to consider the question who are Hindus and what are the broad features of Hindu religion. In Paragraph 29, it has noted that when one thinks of Hindu religion, it is difficult, if not impossible, to define Hindu religion or even adequately describe it. It is noted that unlike other religions in the world, it does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more. After adverting to extract from books written by different scholars, it proceeded to observe thus:

> **"33.** The monistic idealism which can be said to be the general distinguishing feature of Hindu Philosophy has been expressed in four different forms: (*1*) Non-dualism or Advaitism; (*2*) Pure monism: (*3*) Modified monism; and (*4*)

Implicit monism. It is remarkable that these different forms of monistic idealism purport to derive support from the same vedic and Upanishadic texts. Shankar, Ramanuja, Vallabha and Madhva all based their philosophic concepts on what they regarded to be the synthesis between the *Upanishads*, the *Brahmasutras* and the *Bhagavad* Gita. Though philosophic concepts and principles evolved by different Hindu thinkers and philosophers varied in many ways and even appeared to conflict with each other in some particulars, they all had reverence for the past and accepted the Vedas as the sole foundation of the Hindu philosophy. Naturally enough, it was realised by Hindu religion from the very beginning of its career that truth was many sided and different views contained different aspects of truth which no one could fully express. This knowledge inevitably bred a spirit of tolerance and willingness to understand and appreciate the opponents point of view. That is how "the several views set forth in India in regard to the vital philosophic concepts are considered to be the branches of the self-same tree. The short cuts and blind alleys are somehow reconciled with the main road of advance to the truth.[9] When we consider this broad sweep of the Hindu philosophic concepts, it would be realised that under Hindu philosophy, there is no scope for ex-communicating any notion or principle as heretical and rejecting it as such."

"**37.** The development of Hindu religion and philosophy shows that from time to time saints and religious reformers attempted to remove from the Hindu thought and practices elements of corruption and superstition and that led to the formation of different sects. Buddha started Buddhism; Mahavir founded Jainism; Basava became the founder of Lingayat religion, Dnyaneshwar and Tukaram initiated the Varakari cult; Guru Nank inspired Sikhism; Dayananda founded Arya Samaj, and Chaitanya began Bhakti cult; and as a result of the teachings of Ramakrishna and Vivekananda, Hindu religion flowered into its most attractive, progressive and dynamic form. If we study the teachings of these saints and religious reformers, we would notice an amount of divergence in their respective views; but underneath that divergence, there is a kind of subtle indescribable unity which keeps them within the sweep of the broad and progressive Hindu religion."

"38. There are some remarkable features of the teachings of

these saints and religious reformers. All of them revolted against the dominance of rituals and the power of the priestly class with which it came to be associated; and all of them proclaimed their teachings not in Sanskrit which was the monopoly of the priestly class, but in the languages spoken by the ordinary mass of people in their respective regions."

"39. Whilst we are dealing with this broad and comprehensive aspect of Hindu religion, it may be permissible to enquire what, according to this religion, is the ultimate goal of humanity? It is the release and freedom from the unceasing cycle of births and rebirths; Moksha or Nirvana, which is the ultimate aim of Hindu religion and philosophy, represents the state of absolute absorption and assimilation of the individual soul with the infinite. What are the means to attain this end? On this vital issue, there is great divergence of views; some emphasise the importance of Gyan or knowledge, while others extol the virtues of Bhakti or devotion; and yet others insist upon the paramount importance of the performance of duties with a heart full of devotion and mind inspired by true knowledge. In this sphere again, there is diversity of opinion, though all are agreed about the ultimate goal. Therefore, it would be inappropriate to apply the traditional tests in determining the extent of the jurisdiction of Hindu religion. It can be safely described as a way of life based on certain basic concepts to which we have already referred."

"40. Tilak faced this complex and difficult problem of defining or at least describing adequately Hindu religion and he evolved a working formula which may be regarded as fairly adequate and satisfactory. Said Tilak: "Acceptance of the Vedas with reverence; recognition of the fact that the means or ways to salvation are diverse and realisation of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion"[13]. This definition brings out succinctly the broad distinctive features of Hindu religion. It is somewhat remarkable that this broad sweep of Hindu religion has been eloquently described by Toynbee. Says Toynbee: "When we pass from the plane of social practice to the plane of intellectual outlook, Hinduism too comes out well by comparison with the religions and ideologies of the South-West Asian group. In contrast to these Hinduism has the same outlook as the pre-Christian and pre-

Muslim religions and philosophies of the Western half of the old world. Like them, Hinduism takes it for granted that there is more than one valid approach to truth and to salvation and that these different approaches are not only compatible with each other, but are complementary"[14]."

"**41.** The Constitution-makers were fully conscious of this broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Article 25 has made it clear that in sub-clause (*b*) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

"**42.** Consistently with this constitutional provision, the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956 have extended the application of these Acts to all persons who can be regarded as Hindus in this broad and comprehensive sense. Section 2 of the Hindu Marriage Act, for instance, provides that this Act applies—

(*a*) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(*b*) to any person who is a Buddhist, Jaina, or Sikh by religion, and

(*c*) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

The same provision is made in the other three Acts to which we have just referred."
(emphasis supplied)

86. The Apex Court then went on to examine the philosophy, teachings and practice, rituals in relation to *Swaminarayan* sect. It has noted that *Swaminarayan* is a follower of *Ramanuja*, and the essence of his teachings is that every individual should follow the main Vedic injunctions of a good, pious and religious life and should attempt to attain salvation by the path of devotion to Lord Krishna. It also considered the special distinctive features of *Swaminarayan* sect and repelled the plea that it was different from Hindu religion and Hindu philosophy. It found that the said sect was born, which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion and Hindu philosophy.

87. If we go to the earliest decision on the point as to what is meant by religious denomination, reference can be usefully made to the Constitution Bench Judgment of the Apex Court in **Shirur Mutt's case (supra)**. In Paragraph 15, this question has been considered. The Apex Court has referred to word `denomination' as defined in the Oxford Dictionary to mean "a collection of

individuals classed together under the same name : a religious sect or body having a common faith and organisation and designated by a distinctive name". In the recent decision of the Apex Court in the case of **Nellor Marthandam Vellalar & Ors. v. Commissioner, Hindu Religious & Charitable Endowments and Ors. reported in AIR 2003 SC 4225,** the Court has reiterated the settled position in law regarding the meaning of expression "religious denomination". In Paragraph 8 of this decision, it is noted that the said expression takes its colour from the word `religion'. It has then observed that the expression `religious denomination' must satisfy three requirements- (1) it must be collection of individuals who have a system of belief or doctrine which they regard as conducive to their spiritual well being, i.e., a common faith; (2) a common organisation; and (3) designation of a distinctive name. It has further observed that it necessarily follows that the common faith of the community should be based on religion and in that they should have common religious tenets; and the basic cord which connects them, should be religion and not merely considerations of caste or community or societal status. In

the same Paragraph, while considering the claim of Nellor Community, the Court has observed that it was necessary for them to establish their claim in respect of the temple that the said denomination group has established and is

maintaining and administering the suit temple to get the protection of Article 26 of the Constitution.

88. I shall first advert to the finding of fact recorded by the two Courts below that the temples at Pandharpur were not religious denominational institutions. In **Venkataramana Devaru's case (supra),** in Paragraph 16, the Apex Court expounded that it is well established that when there is a question as to the nature and extent of a dedication of a temple, that has to be determined on the terms of the deed of endowment if that is available, and where it is not, on other materials legally admissible, and proof of long and uninterrupted user would be cogent evidence of the terms thereof. In the present case, the Courts below have applied the latter principle as deed of endowment was not available. Both the

Courts below on analysing the materials on record, have answered this issue against the Appellants. The *Badves* did not pursue this claim as noted by the lower Court. The *Sevadharis* and *Utpats* did argue that the temples were religious denominational institutions. That has been rightly negatived by the Courts below. There is nothing on record to show that the temples were established by the particular religious head having distinctive philosophy, of whom, the three priestly classes singularly or together were the followers or disciples. The positive evidence on record as noted by the two Courts below indicates the existence of temple to be traced to 13th century, if not during the latter part of the 12th century. The temples are not private temples. The priestly classes are not the owners thereof. Rather, it has been concurrently found that both the temples (*Vithoba* and *Rukmini*) when established at different points of time, none of the priestly classes were connected therewith. The priestly classes have come on the scene much later. Indeed, their association with the temples has lost in antiquity. The fact remains that the temples were not established by them nor they claim to be the owners of

the temples and their property and endowment. They, at the highest, claim to be performing certain activities of carrying on *sevas* and *pujas* and giving services to the devotees and pilgrims for remuneration. Suffice it to observe that the temple was not established by or for a collection of individuals' classed together under the same name or by a religious sect or body having a common faith and organization and designated by distinctive name. Indubitably, the temples are public temples open to all persons abiding to different faiths and philosophies. The Courts below have therefore rightly negated the plea that the temples were religious denominational institution as such. In the case of **Nellor Marthandam Vellalar (supra)**, the Apex Court, in similar situation, held that the protection of Article 26 of the Constitution was unavailable to such temples. In the case of **Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. v. State of U.P. & Ors. reported in (1997) 4 SCC 606 -** Para 33, the Apex Court held thus :

> "33. Thus, it could be seen that every Hindu whether a believer of Shaiva form of worship or of panchratna form

> of worship, has a right of entry into the Hindu Temple and worship the deity. Therefore, the Hindu believers of Shaiva form of worship are not denominational worshippers. They are part of the Hindu religious form of worship. The Act protects the right to perform worship, rituals or ceremonies in accordance with established customs and practices. Every Hindu has right to enter the Temple, touch the Linga of Lord Sri Vishwanath and himself perform the pooja. The State is required under the Act to protect the religious practices of the Hindu form of worship of Lord Vishwanath, be it in any form, in accordance with Hindu Shastras, the customs or usages obtained in the Temple. It is not restricted to any particular denomination or sect. Believers of Shaiva form of worship are not a denominational sect or a section of Hindus but they are Hindus as such. They are entitled to the protection under Article 25 and 26 of the Constitution. However, they are not entitled to the protection, i particular, of clauses (b) and (d) of Article 26 as a religious denomination in the matter of management, administration and governance of the temples under the Act. The Act, therefore, is not ultra vires Articles 25 and 26 of the Constitution."
>
> (emphasis supplied)

89. The Temples at Pandharpur, therefore, cannot be considered as religious denominational institutions. As the temples are held not to be religious denominational institutions, it is incomprehensible as to how the priestly classes can be heard to say that the activities performed by them in the said Temples, as are covered by the enactment in relation to managing the affairs of the temples, to offend matters of their religion or for the purpose of religion as such. For the same reason, they cannot be heard to

say that matters such as receiving or appropriation of offerings in the temples to be protected by Article 26(b). To put it differently, the rights exercised by them in relation to the Temples are not absolute rights, but are subject to public order, morality and health as also to the other provisions of Part III of the Constitution including the authority of the State to make any law regulating or restricting economic, financial or other secular activity which may be associated with religious practice and to provide for social welfare and reform of Hindu religious institutions of a public character.

90. It was next claimed by the priestly classes that each one of them constitute religious denomination or section thereof. Even this issue has been analysed by the Courts below threadbare with reference to the pleadings and the evidence which has come on record. Each of them had asserted that they were doing certain *sevas* and *pujas* and that, were known by one name and were organized for collective and distributed responsibilities; That they had common faith worship of deity and *Parivar Devatas* and the

performance of certain spiritual and rituals which are their hereditary duties coupled with benefits available for the maintenance of the temple and enjoyed by long tradition which was inseparable from the temple, from vintage period, as nobody had seen the temple without their presence. Even this claim has been carefully considered in every respect by the Courts below and negated. The finding recorded by the Courts below on the relevant issues will have to be affirmed as the same is cogent and founded on tangible material on record. The Appellate Court has considered the minute aspects to negative the plea taken by the Appellants that each group constitutes religious denomination or section thereof. That finding being unexceptionable, warrants no interference. It is not necessary for this Court to examine the correctness of every reason given by the lower Courts to find out some mistake here or there so as to take a different view. It is possible for this Court to uphold the findings of fact on the basis of tangible reasons which have weighed with the Courts below. The scope of Second Appeal is not to re-appreciate the evidence on record, so as to reach at a different conclusion merely because

some other view was possible on the basis of the same evidence. As it is not a case of perverse finding recorded by the Courts below, nor any error apparent on the face of the record, coupled with the limited scope of the substantial question of law formulated while admitting these Appeals, it will not be open to dwell upon the correctness of the finding of fact as such, nor the arguments made before this Court would persuade me to take the view that the finding of facts recorded by the Courts below on relevant issues are perverse, manifestly wrong, or error apparent on the face of the record. The limited issue that needs to be addressed is, accepting the finding of fact recorded by the Courts below as it is, whether the conclusion reached by the Courts below on the legal issue can be said to be correct position in law.

91. We have already adverted to the established legal position as to what is a religious denomination. In the case of **Shirur Mutt (supra)** as to what constitutes religious denomination, has been examined. The principle stated in **Shirur Mutt's case (supra)** has been reiterated in the subsequent

Judgment of the Constitution Bench in the cases of **Ratilal Panachand Gandhi (supra), Venkataramana Devaru (supra)** and **S.P.Mittal (supra)**. The Courts below have referred to these decisions and have extracted the quotation therefrom. Courts below have concurrently found that considering the historical background of Pandharpur Temples, the philosophy of *Bhagvad Dharma,* so also the practice of *Warkari cult*, the priestly classes were not collection of individuals, who have a system of beliefs or doctrines which they regard as conducive to their spiritual well being i.e. a common faith. That the common names of the priestly classes i.e. *Badves*, *Utpats,* and seven *Sevadharis,* are their surnames associated with their activities or sevas performed by them or that of their caste. The priestly classes were associated with the ritualistic worship in the temples, which are performed as per the Shastras commonly followed in all other Hindu temples. There is no evidence that the ritualistic worship performed by the priestly classes in the Temples in question to be styled as special characteristics or different from the rituals performed in all other Hindu Temples of public character. There is no material on record

that the rituals performed in the Temples in question have been started by the priestly classes. In fact, those rituals are performed by the priestly classes in the temples for means of their livelihood, as is asserted by them. That none of the priestly classes are the spiritual heads or leaders of a group following particular doctrine or faith. There was no evidence regarding the common origin in the case of any of the priestly classes. The priestly classes belong to different *Shakhas* or branches such as *Rigvedis*, *Yajurvedis*, *Madhyandin* branch of *Deshastha Brahmins.* They are not a close community. Their marriages have taken place in families outside the community. Neither they had founded the temple, nor there was evidence regarding the purpose of foundation of the temples. The devotees or pilgrims who visit the temples believe in devotion or *bhakti* and *darshan* of God Vithoba and Goddess Rukmini and are not particular or concerned about the ritualistic worship. There was no evidence that the priestly classes were required to take a special *diksha,* initiation or training to enable them to perform their services in the temples. There is no evidence that any religious scriptures prohibit performance of

rituals in the Temples in question by persons other than the priestly classes. Such stipulation could be possible only if the Temples were to be established by particular religious head having distinctive philosophy or for a collection of individuals classed together under the same name or religious sect or body having a common faith and organisation and designated by a distinctive name. There was no autonomous machinery of the priestly classes to exercise disciplinary powers. There is no prohibition for the priestly classes to take other avocation for their livelihood. That the evidence is not sufficient to hold that the priestly classes entertained religious faith or tenets distinct from the general Hindus. Even though the priestly classes were followers of *Bhagvad Dharma* and practice the same, *Bhagvad*

Dharma is not a religious denomination as such. In any case, the priestly classes were not engaged in propagating *Bhagvad Dharma* as such, but only perform specified rituals in the temples at Pandharpur. The Courts below on the above reasoning have concurrently found that the evidence on record was not enough to

return a finding in favour of the Plaintiffs about any special characteristics or features of the priestly classes so as to distinguish them as religious denomination or section of any religious denomination. All such aspects adverted to by the Courts below are germane to answer the point in issue. There is, therefore, no infirmity in the approach of the lower Courts while answering the point in issue.

92. Reliance was placed on the decision in the case of **Bramchari Sidheswar Shai & Ors. v. State of West Bengal reported in 1995 (4) SCC 646**. In that case, the Apex Court was called upon to consider whether the followers of Ramkrishna who are a collection of individuals, who adhere to a system of beliefs as conducive to their spiritual well-being, who have organised themselves collectively and who have an organisation of definite

name as Ramkrishna Math or Ramakrishna Mission could be regarded as religious denomination within Hindu religion. On the

facts of that case the said issue has been answered in affirmative. Indeed, in this decision, all the relevant decisions on the point have been considered threadbare. However, on the facts of the present case as concurrently found by two Courts below, it is not possible to countenance the claim of the three priestly classes that they singularly or together constitute religious denomination or section thereof.

93. Assuming for the sake of argument that the priestly classes were religious denomination or section thereof, even then it would make no difference. This is so because, I am disposed to hold that none of the principal provisions of the Act under challenge impinge upon any matter of religion of the priestly classes as are protected by Article 26(b) or the right to own and acquire movable and immovable property within the meaning of Article 26(c). I shall elaborate on this aspect while examining the concerned provisions of the Act under challenge.

94. Grievance is made on behalf of Appellants that the

Courts below have not analysed the documentary evidence which would throw light on the fact about certain rituals to be performed by them. It was argued that so far as *Badves* are concerned, the peculiarity about them was that faith, duty and right was blended together and was not merely a matter of privilege and practice of management in respect of temple and its properties. The documents such as sanad issued by the then ruler in 1675 *shake* 1755 A.D. (*Exhibit 57*), the decision (*Exhibit 64*), decision (*Exhibit 65*), order passed by the Commissioner dated 20th October 1849 (*Exhibit 66*), decision dated 20th April 1891 (*Exhibit 67*), Scheme propounded by the District Court dated 4th June 1892 (*Exhibit 68*) and the Scheme in relation to the temples settled by this Court on 30th September 1896 (*Exhibit 69*) would show that from time immemorial, *Badves* were accepted as having supreme management and to do *seva* of idols with devotion. They had therefore religious right not only to take *darshan* but perform *puja* and rituals. The argument clearly overlooks that the Courts below have considered all the relevant matters before recording a positive finding that *Badves* were not religious denomination or

section thereof. Insofar as the sanad issued by the then ruler (*Exhibit 57*), it mentions that the *Badves* to take the income of the *Pandharpur Devasthan* in the manner specified therein. This sanad was to resolve the issue regarding disposition of offerings made to the deity. It has no bearing on the pronouncement on the fact that *Badves* were not a religious denomination or section thereof. In fact, this sanad makes it clear that *Badves* were to execute bond and abide by the stipulations therein, failing which, they would stand removed. Similarly, the decision (*Exhibit 64*) was to resolve the controversy regarding the rights and duties of *Badves* of taking care of the key of the temple door and the vehicles, the ornaments and articles of the deity and authorised them to take whatever the devotee may place and put at the person of the deity as articles or dress and to perform the *seva* (service) of the *Shree* with devotion to be enjoyed from generation to generation. These decisions do not show in what manner the *Badves* can claim themselves to be religious denomination or section thereof. It is a pronouncement relating to the administration, much less, secular aspect of the temple. The observation made in the said decision that *Badves*

should perform the *seva* (service) of the *Shree* with devotion, does not take us anywhere. That cannot be the sole basis to decide the point in issue. The fact whether *Badves* are religious denomination or section thereof, has to be answered on the basis of factors expounded by the Apex Court already referred to earlier. The Courts below have already considered the matter in that perspective and arrived at concurrent finding of fact. Reference made to the decision (*Exhibit 65*) is also of no avail. Indeed, the dispute was about the *abhishek* of the *prakashan puja* of *Shree Panduranga* between the whole body of *Badves* of the holy place of Pandharpur and the whole body of *Pujaris* of the said holy place. Performance of *abhishek* of the deity, although a matter of religion, however, it is well established as to who should be permitted to do that service is a secular matter, which can be regulated. In other words, it was a right ordained by the Authority in exercise of sovereign power. Same position would obtain in respect of (*Exhibit 66*) – order issued by the Commissioner, Satara, wherein it is mentioned that it is the duty of the office of the *Badves* to cause *darshan* and *puja* of the God and to give *prasad* and such other

things to the pilgrims without causing the temple to be overcrowded. Reliance placed on the decision dated 20th April 1891 (*Exhibit 67*) which was pertaining to the dispute between *Pujaris* and *Badves* will also be of no avail to answer the issue as to whether the priestly classes were religious denomination or section thereof. This order makes it clear that *Badves* were not the owners of the temple, or the idol, or of the property. They are the chief priests, managers, overseers and the guardians of the idol, temple and its property and bound to keep order and to bid *Sevadharis*, perform the duty which hereditarily belong to those priests. Even the decision dated 4th June 1892 (*Exhibit 68*) is of no consequence. That is relevant only for the limited purpose of noting the hereditary rights and privileges of the priestly classes and of no avail on the issue as to whether they were religious denomination or section thereof. Same position applies in respect of the decision dated 30th September 1896 (*Exhibit 69*) passed by this Court while settling the Scheme in respect of the temples in question. Suffice it to observe that these documents, at the highest, show the hereditary rights and privileges of the priestly

classes and the fact that the same have been enjoyed by them from antiquity. However, the question whether the priestly classes were religious denomination or section thereof, could be answered only by applying the test expounded by the Apex Court in that behalf. With regard to the fact as to the priestly classes were known by one name, that issue has been considered and addressed by the Courts below. As rightly argued by the Respondents, the restriction imposed on the specified rights and privileges enjoyed by *Badves* which are the subject matter of the impugned enactment, were the outcome of sovereign pleasure. To put it differently, as the source of such rights and privileges was the sovereign act, the same could be regulated and restricted by law. From these documents, it is evident that the activities discharged by the priestly classes were earlier performed by others at the relevant time. If so, it cannot be essential part of religious duty of the priestly classes as such. But the activities performed, the source whereof is ascribable to sovereign pleasure. This is evident from the documents such as *Exhibit 243* and *Exhibit 59* issued by the then Ruler and also the other documents referred to

above. Accordingly, the history shows that the then Rulers had control or something to do with the management of the temples and regulated the secular functions.

95. Suffice it to observe that the concurrent finding of two Courts below is that merely because the priestly classes have common surname referable to the nature of duty performed by them, would be of no avail. The fact as to whether the priestly classes are organised and have common distinct, common faith and common spiritual organisation and belief in a particular religious teacher or philosophy, those aspects have also been considered on the basis of evidence on record. To wit- in relation to *Badves*, the Courts below have noted that the common organisation was not for spiritual organisation as such. The Courts below have anlaysed all the relevant matters threadbare to answer the said aspect. It is noted that with the passage of time, the *Badves and Utpats* evolved mechanism of enjoying and appropriating the offerings, without any dispute arising between them inter se. For that purpose, they evolved mechanism that only those *Badves* who

would give highest bid in the auction would be entitled to collect the offerings made to the deity in the temple. They are described as *Divaskari Badves*. This by no standards, can be said to be religious matter or essential part of religion. The sole purpose for evolving such arrangement was to amicably work out solution for distribution of the offerings without any dispute *inter se*. The auction amount was distributed between the *Badves* as per their entitlement and the person who gave highest bid, then would become entitled to collect offerings made to the deities in the temple. Such common organisation was surely not a spiritual organisation. Even on the requirement of common faith, the Courts below have concurrently found that the *pujas* performed in the temples were as per the S*hastras* which are commonly followed in every Hindu temple and cannot be said to be peculiar to the temples or for that matter, to the priestly classes. The Respondents have rightly argued that there was no pleading to show link between the principal deity in the temples and the *Parivar Devatas*. The *Parivar Devatas* are not named in the pleadings, but has come only in evidence. Besides, there was no

pleading as to how the *pujas* or *sevas* performed by the priestly classes in the Temples in question were distinct from the *Pujas* performed in the other Hindu Temples of public character. It is not the case of the priestly classes that there was any peculiarity or distinctive character relating to the *pujas* and *sevas* performed by them in the Temples. In other words, though certain spiritual rituals are being carried out by the priestly classes from antiquity, that cannot be the basis to conclude that the priestly classes were religious denomination or section thereof. The Courts below have adverted to several other aspects to answer the point in issue. I have already referred to those matters in the earlier part of this Judgment.

96. Insofar as the *Utpats* are concerned, they would rely on documents such as *Indapur Sthal Prat (Exhibit 72), Bijapur Sthal Prat (Exhibit 71),* decisions of Courts (*Exhibits 81 and 85),* etc. The reason stated while analysing the documents pressed into service by *Badves* would apply on all fours to the case of *Utpats*. The rights and privileges spelt out from these decisions have been

recognised by the enactment as is evident from the definition such as of Badves Section 2(c), of *Benari* Section 2(d), of *Dange* Section 2(h) and the like. Accordingly, no fault can be found with the concurrent finding reached by the two Courts below on the issue as to whether the priestly classes were religious denomination or section thereof.

97. There was another facet of argument which was pressed before the Courts below and may require consideration in this Judgment. It was argued that each of the priestly class belonged to section of *Warkari* sect which undoubtedly has been found to possess special features or peculiar characteristics on account of which it would stand out as a religious denomination. Firstly, there is no pleading that devotees or pilgrims belong to a particular religious group distinct from others. Even so, this argument has been taken note of by the Courts below, in particular, the Appellate Court; and has been answered against the Appellants-the three priestly classes. The Appellate Court has noted that the tenets of *Warkari Sampradaya* are peculiar, that none of the practices

observed or activities performed by the three priestly classes can be the basis to hold that the priestly classes form part of *Warkari Sampradaya* as such. For that, the Appellate Court has noted the practices followed by the devotees, pilgrims who belong to *Warkari Sampradaya* and in contradistinction, considered the activities of the priestly classes to answer the issue against the Appellants. Neither the finding of fact recorded on analysis of evidence can be said to be perverse, manifestly wrong or error apparent on the face of the record. In my view, it is not necessary for this Court to burden this Judgment with the issue whether *Warkari Sampradaya* is a religious denomination. Suffice it to observe that assuming that the *Warkari Sampradaya* is a distinct sect or a religious denomination having peculiar characteristics of its own and because *Warkari Sampradaya* preaches *Bhagvad Dharma,* which incidentally is also followed by three priestly classes, that would not make them (priestly classes) section of the *Warkari Sampradaya*. On the other hand, from the claim of the three priestly classes, it is obvious that they have distanced themselves from the devotees or pilgrims who follow *Bhagvad Dharma* by asserting that it is because

of them the devotees, pilgrims can accomplish the desire of taking *darshan* and performing *pujas* in the temples. The devotees and pilgrims visiting the temples belong to the *Warkari Sampradaya*. Indeed, none of the priestly classes have claimed nor succeeded in establishing that they were the spiritual heads of the *Warkari Sampradaya*. In any case, the entire debate of religious denomination or section thereof will become insignificant if this Court were to hold and which I am inclined to do for the reasons I will refer to a little later, that none of the matters covered by the impugned provisions of the Act were matters of religion.

98. I have no hesitation in upholding the concurrent finding of fact recorded by the two Courts below that neither the temples at Pandharpur can be said to be religious denominational institution, nor the three priestly classes associated with the said Temples either singularly or together are religious denomination or section of any religious denomination. Therefore, the question of infringement of Article 26(b) or 26(c) of the Constitution does not arise. Left with this situation, the challenge will have to be

considered only from the context of whether the Act as a whole or any provision thereof transgresses the permissible restrictions in the matters of religious practice that is protected in terms of Article 25 of the Constitution.

99. The sweep of Article 25 of the Constitution is not as absolute as it would be in the case of protection under Article 26 of the Constitution. Article 25 no doubt guarantees freedom of conscience and right freely to practice, profess and propagate religion but is not an absolute right. It is subject to public order, morality and health and to the other provisions of Part III of the Constitution. In addition, Clause (2) of Article 25 of the Constitution enables the State to make any law regulating or restricting any economic, financial, political or other secular activity, which is associated with religious practice as also providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. While considering the legislative intent for enacting the impugned Act and its sweep in the earlier part of this Judgment, I

have already observed that the impugned Act is an Act which is intended to bring about changes in economic, financial, political or other secular activities as well as providing for social welfare and reform associated with religious practice. I shall elaborate on this aspect while examining the relevant provisions of the Act. Suffice it to observe that this Act has been introduced in the interests of general public. It will be useful to refer to the decision of the Apex Court in the case of **Venkataramana Devaru (supra)**, which is a decision of the Constitution Bench. The Apex Court was called upon to consider the question as to whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) can be controlled by a law protected by Article 25(2)(b). In the present case, we have already seen that protection under Article 26 is not available to the Appellants (three priestly classes).

100. However, if this Court were to proceed to examine the controversy on the assumption that Article 26 was also available, in that case, the dictum of the Apex Court in this decision would

assume relevance. The principle stated is that distinction will have to be kept in mind with regard to matters of religion and the activities for the purpose of religion or religious activity, which however, ought to constitute essential part of a religion. Only those activities will get protection of Article 26(b) of the Constitution which is an absolute right of a religious denomination or any section thereof. In respect of any other activity, which is not strictly religious or for the purpose of religion, which is secular activity, that activity can be regulated by Legislature on parameters known to Article 25 of the Constitution. This dichotomy has been analysed in Paragraph 29 of the reported Judgment which reads thus :

> "(29) The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Art.25(2) (b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Art.26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared

under Art.25(2)(b) will prevail. While, in the former case, Art.25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both the provision and Art.26(b). We must accordingly hold that Art.26(b) must be read subject to Art.25(2)(b). ”

101. It will be useful to also refer to the dictum in Paragraphs 31 and 32, which read thus:

“(31) The learned Solicitor-General for the respondents assails this portion of the decree on two grounds. He firstly contends that the right to enter into a temple which is protected by Art.25(2)(b) is a right to enter into it for purposes of worship, that that right should be liberally construed, and that the modifications in question constitute a serious invasion of that right and should be set aside as unconstitutional. We agree that the right protected by Art.25 (2)(b) is a right to enter into a temple for purposes of worship, and that further it should be construed liberally in favour of the public. But it does not follow from this that that right is absolute and unlimited in character. No member of the Hindu public could, for example, claim as part of the rights protected by Art.25(2)(b) that a temple must be kept open for worship at all hours of the day and night, or that he should personally perform those services, which the Archakas alone could perform. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times, the public in general are free to participate in the worship. Thus, the right recognised by Art.25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonising the right conferred by Art.25(2)(b) with that protected by Art.26(b).

(32) We have held that the right of a denomination to wholly exclude members of the public from worshipping in the temple, though comprised in Art.26(b), must yield to the

> overriding right declared by Art.25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Art.25(2) (b) overrides that right so as extinguish it, but whether it is possible – so to regulate the rights of the persons protected by Art.25(2)(b) as to give effect to both the rights. If the denominational rights are such that to give effect to them would substantially reduce the right conferred by Art.25(2)(b), then of course, on our conclusion, that Art.25(2)(b) prevails as against Art.26(b), the denominational rights must vanish. But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Art.25(2)(b) as to give effect to Art.26(b), and recognise the rights of the denomination in respect of matters which are strictly denomination, leaving the rights of the public in other respects unaffected."

102. A priori, having regard to the legislative intent of enacting the Pandharpur Temples Act, 1973, it necessarily follows that the same will receive protection of the excepted clauses of Article 25 of the Constitution. It is a law not only in the interests of the general public, but also law on the matters associated with the religious practice, attempting to regulate or restrict economic, financial, political or other secular activity and providing for social welfare and reform with regard to Hindu religious temples of a

public character to all classes and sections of Hindus. The Apex Court in **Shirur Mutt's Case (supra)** has expounded in Paragraph 18 thereof that - “Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by doing so, it might interfere with religious practices.” The other observations on same lines referable to Article 25 can be seen in Paragraph 19 (sub para (2) thereof). It will be useful to refer also to Paragraph 10 of **Ratilal Panachand Gandhi' sCase (supra).** The challenge to the provisions of the Act will therefore have to be examined only in this limited sphere. Indeed, the enactment need not be on account of public order, morality and health. It can legitimately be brought about even to regulate or restrict the economic, financial, political or other secular activities associated with the religious practice or to provide for social welfare and reform to Hindu religious institutions of a public character to all classes and sections of

Hindus. If the enactment does not satisfy that test, the provisions of the impugned Act can be frowned upon and held to be ultravires Article 25 of the Constitution. It is also necessary to find out whether any provision in the impugned Act infringes the personal rights of the priestly classes from practising and propagating the religious tenets. In the words of the Supreme Court, it is the propagation of belief that is protected by Article 25, no matter whether the propagation takes place in a church or monastery or in a temple or "parlour meeting" [*see paragraph 14 of* ***Shirur Mutt's Case (supra)].*** In **Ajmer Darga' s case (AIR 1961 SC 1402),** it is observed that the practice must be shown as essential part of religion. In this context, let us examine the crucial provisions of the Act.

103. At the outset, it will have to be borne in mind that the impugned Act is in relation to specified public temples at Pandharpur. The Act was passed to provide for the better administration and governance of the said Temples. In doing so, as will be presently seen, the Legislature has taken precaution to

safeguard the performance of religious rites and the observance of religious practices in accordance with traditional usage and custom. Besides, none of the provisions in the Act affect the rights guaranteed to any of the priestly classes in the matter of their religion. We shall first refer to the preamble of the Act. Indeed, the preamble mentions that it is an act to provide for the abolition of "all" the hereditary rights, privileges of ministrants and priestly classes functioning in the temples of *Vithoba* and *Rukmini* at Pandharpur and for acquisition of such rights and privileges and vesting thereof in the Committee established for the purposes, etc. The expression "all" will have to be considered in the context of the sweep of Section 4 of the Act, which purports to abolish the "specified rights" of the priestly classes and to acquire the same and vest in the Committee established under Section 21 of the Act. The expression "all" occurring in preamble, therefore, cannot be given expansive meaning than the limited matters in respect of which the Legislature has brought about regulation or restriction. Thus understood, the submission that the Act has expansive provisions which also touch upon matters of religion of the priestly

classes, cannot be countenanced.

104. For the time being, it may not be necessary to advert to definitions in Section 2 of the Act in detail. Suffice it to observe that the definition of the respective priestly classes given in Section 2 is accurate insofar as the role performed by them in relation to the deity or the temple and its properties and there can be no controversy in that regard. For instance, the definition of *Badves* refers to the decision of the High Court which has declared that the *Badves* are the chief priests, managers, guardians and overseers only of the idol, temple and property belonging thereto. It also refers to the scope of activities to be undertaken by *Badves* such as to keep order and to bid the *Sevadharis* perform the duties which belong hereditarily to those priests. The said provision is founded on the decision of the High Court referred to therein which declares that *Badves* were not to be the owners of the temple, idol or the property as such. The scheme envisaged by the said provision recognises the hereditary rights of *Badves* in the management of the property of the idol *Vitthal*. As in the case of

Tilkayat in Nathdwara Temple's Case (supra), even in the case of *Badves,* the then ruler issued orders whereunder they were declared to be the chief priests, managers, guardians and overseers only of the idol, temple and property belonging thereto. The definition also refers to the fact that the Scheme propounded by the High Court was later on explained and modified to some extent. In short, the definition highlights the hereditary rights and privileges enjoyed by the concerned priestly classes and the basis on which their rights and privileges are recognized. I may, however, note some grievance made on behalf of *Utpats* before this Court. According to them, the definition of *Utpats* is neither comprehensive nor accurate, as in the case of others. Moreover, the same is too wide to cover all affairs to include their religious matters. Argument though attractive, is devoid of merits. This is so because, in the case of *Badves*, there were judicial pronouncements describing their role as the chief priest, managers, guardians and overseers. This Act is intended to undo that. In the case of *Utpats,* they have been found to be in exclusive charge of the Temples of *Goddess Rukmini* and the

Parivar Devatas thereof, exercising hereditary right and privilege of performing specified *sevas* and services in that temple and of appropriating or receiving income from the exercise of such hereditary right and privilege. Besides, the Act makes it clear that the expression *Utpats* includes a *Divaskari Utpat.* Similarly, the Act is not too wide as contended, but it only deals with the matters essentially referred to in Section 4 of the Act. I shall elaborate on these aspects a little later. For the present, it will be apposite to reproduce the definition of the priestly classes which read thus:

> "2.(c) ***"Badves"***, in relation to the Temple of God Vitthal, means all those persons who according to the decision of the High Court in *Gangaram and Others Vs. Banaji Shankar and Others*(1891 P.J.182) are declared to be the chief priests, managers, guardians and overseers only of the idol, temple and property belonging thereto, and as such bound to keep order, and to bid the *Sevadharis* perform the duties which belong hereditarily to those priests, but are declared to be not the owners of the temple, idol or the property aforesaid; and whose hereditary rights in the management of the property of the idol *Vitthal* were determined by a scheme approved by the High Court in *Sakharam Bhimaji Benare and others vs. Gangaram Babaji Badve and others* in Appeal No.141 of 1892; and *Gangaram Babaji Badve and others* (original defendants) Vs. *Sakharam Vaman*(with the consent of the Advocate General) *and others* (original plaintiffs) in Appeal No.168 of 1892(1896 P.J.644) as explained or modified by subsequent decisions, including the earlier decision of the High Court in *Gangaram Babaji Badve and others*(original defendants) Vs. *Vitthal Dingre and others* (original plaintiffs)(Appeal No.130 of 1890) and *Govardhan Vitthal Dingre*(original plaintiffs) Vs.

Gangaram Babaji Badve and others(original defendants) (Appeal No.5 of 1891)(1894 P.J.6); and who are accordingly exercising these hereditary rights and privileges including any other rights and privileges claimed under any order or decree of any court or otherwise in the Temple of God *Vitthal* : and include as *Divaskar. Badva;*

(d) ***"Benari"*** means a person who exercises the hereditary right and privilege of chanting *Mantras* or hymns from the *Vedas* or otherwise at the relevant time of performing *nitya* or daily or *naimittik* or occasional services in the temple of God *Vitthal,* and of appropriating or receiving income from the exercise of such hereditary right and privilege, including the right of receiving *yajman* offerings of *puja* vessels, provided the same are put into his hands by the devotee, of officiating at the worship of *Ganapati, Varuna* and *Bhumi* and of receiving the money offerings and of officiating as *Joshi* and *Upadhyaya* at *munj* and marriage ceremonies performed in the Temple of God *Vitthal* and of receiving the customary fees, being the right and privilege recognised by the decision of the High Court in *Gangaram Babaji and Others* vs. *Narayan Annaji and Others* (1891 P.J.148) and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise;"

(h) ***"Dange"*** means a person who exercise the hereditary right and privilege of remaining present in the Temple of God *Vitthal* from *kakadarti* till *shejarti,* of attending all daily *pujas* and at daily and special services (not being fair or similar other time), of keeping order during all such *pujas,* doing duty of a *chopdar* or macebearer on all such occasions by standing at the arched door (whether inside or outside of it) with a silver, golden or other metal or wooden stick in hand, of asking for dakshina from the devotees or pilgrims, of receiving what the latter may be pleased to give him, of receiving one-third share of the offerings made to the *Sevadharis,* of inviting other *Sevadharis* when necessary, independently of the *Badve*' s order, of taking at the time of morning *arti* and of evening *dhuparti* the *dhuparti* and stick in hand and in company with a *paricharak*-- one of the *sevadharis*-- and of waving that *arti* in front of *Rukmini* and other minor God; on coming to the *Garud* temple, of distributing ashes among the devotees or pilgrims present, of

asking for or receiving *dakshina* from them and distributing *angara* in northern part of the town, and of receiving *dakshina* also on that account, being hereditary right and privilege recognised by the decision of the Court of Joint First Class Subordinate Judge A.P. at Sholapur in *Ramchandra Babaji vs. Gangaram Babaji, Krishna Babaji, Vishwanath Gopal and Others (Appeal No.37)* and *Gangaram Babaji, Krishna Babaji, Vishwanath Gopal and Others* vs. *Ramchandra Babaji* in Appeal No.44 of 1893 decided on 28th day of September 1894; and includes any other rights and privileges claimed under any order or decree of any court or otherwise;"

(i) ***"Divaskari Badva or Utpat"*** means the *Badva or Utpat* who purchases the right of *Badves* or *Utpats* of taking the next day's offerings made by devotees or pilgrims before God *Vitthal,* or as the case may be, before the Goddess *Rukmini,* and for that purpose, being in charge of the collections for that day, remains present near God *Vitthal* or Goddess *Rukmini ;*

(j) ***"Dange"*** means a person who exercises the hereditary right and privilege of showing the mirror after the idol is dressed and after sweeping the floor from the throne to the bed chamber, of sprinkling water, of drawing figures in white and coloured powder thereon (including *rangoli* marks) and then of spreading *paulghadi* to cover that space, when the idol is supposed to go to the *shejghar* (or bed-chamber) for night's rest at the relevant time of performing the *nitya* or daily services in the temple of God *Vitthal*, and of appropriating and receiving income from the exercise of such hereditary right and privilege [including taking any offerings that may be placed on the cloth (paulghadi) by devotees or pilgrims and any articles which may be put into his hands by devotees] being a hereditary right and privilege recognised by the decision of the High Court in *Gangaram Babaji Badve and Others vs. Govardhan Vithal Dingre and Others and Govardhan Vithal Dingre and Others vs. Gangaram Babaji Badve and Others (1894 P.J. 6);* and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise;

(l) ***"Diwate"*** means a person who exercises the hereditary right of being present with torch in hand in the Temple of God

Vitthal from *kakadarti* till *shejarti*; of attending (not in the inner anti-chamber of the deity) all daily *pujas* and daily and special *upcharas,* of attending all kinds of *yajman pujas* wherein *abhishek* with *panchamrit* is made, of standing outside the arch-door with a stick in hand and in the case of *yajman pujas* where the *mantra yasya kritya* is recited near the shrine of *Garud,* of asking along with other *Sevadharis dakshina* after the *mantra* is recited and not before; in the case of *pujas* wherein no such *mantra* is recited near the shrine of *Garud,* of asking for *dakshina* when the *yajman* comes out of the anti-chamber of the deity and *puja* is declared to be at end, when the *yajman* comes near the *Garud* shrine, of receiving any golden, silver or other metal or wooden stick if the same is actually given in his hand by any of the devotees or pilgrims, of asking and receiving *dakshina* from devotees of pilgrims generally without causing them obstruction or annoyance, of receiving a twelfth share in the income of *Sevadharis,* after a *yajman puja* is over along with *Hardas*, of escorting the *yajman* to his lodging and receiving *dakshina* or presents from him, and in company with a *paricharak* of waving the morning *arti* and evening *dhuparli* in front of the minor idols, of distributing *angara* and receiving *aakshina* for so doing, and of attending with stick in hand all *palkhi* processions of the deity, being the hereditary right and privilege recognised by the decision of the Court of Joint Judge, A.P. At Sholapur in *Gopal Ramchandra Divte vs. Gangaram Babaji and Others* in Appeal No.39 of 1893; and *Gangaram Babaji and Others vs. Gopal Ramchandra Divte* in Appeal No.45 of 1893 decided on 28th September 1894; and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise."

(o) ***"Hardas"*** means a person who exercises the hereditary right and privilege of being always present in the Temple of God *Vitthal* and of receiving "*aratis"* (chants at the wavings before the idol), at the relevant time of performing *nitya* or daily or *naimittik* or occasional services in the Temple of God *Vitthal* or performing *kirtans* on certain holy days, and of performing *kala* ceremony on *Ashad* and *Kartik Vad I,* and of appropriating and receiving income from the exercise of such hereditary right and privilege (including the right of receiving the sixth share of the offerings made to *Sevadharis* and the right of receiving musical instruments as are placed in his

hand by the devotees and that the right to ask for alms is exercised after the *puja* is completed), being a hereditary right and privilege recognised by the decision of the High Court in *Gangaram Babaji and Others vs Sakharam Kusaji and Others* (1891 P.J.136); and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise;

(q) ***"Kolis"*** means persons belonging to the *Koli* community who claim that they have hereditary right of worship of the four *lingas* namely, *Rameshwar* and *Vishveshwar* in the northern part of the temple, *Koteshwar* in the western part, and the *linga* on the head of the idol '*Vitthal*' and to receive income therefrom ;

(r) ***"Kshetropadhye"*** means a person who attends on devotees or pilgrims called *Yazmans* who desire to have *darshan* of God *Vitthal* or Goddess *Rukmini* on payment of remuneration as may be agreed upon between him and the *Yazmans*

(u) ***"pujari"*** means a person who exercise the hereditary right of performing the actual act of worship (and the *Badves* cannot prevent the same from being performed), such as bathing and dressing and undressing the idol, putting on and removing ornaments, flowers, garlands and sandal paste and waving the arti or offering *naivedya* to the idol at the relevant time of performing *nitya* or daily or *naimittik* or occasional services in the Temple of God *Vitthal,* and of appropriating or receiving income including *Ovalni* or waved offering whether deposited or given to the *pujari* (after *dakshina* is deposited) from the exercise of such hereditary right and privileges being a hereditary right and privilege recognised by the decision of the High Court in *Gangaram Babaji Badve* and *Others* vs. *Banaji Shankar and Others* (Appeal No.90 of 1886) 1891 P.J.182; and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise ;

(v) ***"paricharak"*** means a person who exercises the hereditary right of being present at the early light waving or *kakadarthi,* of taking the torch from the Badve and handing it over to the pujari ; at the second light waving, of taking *ekarti*

from the pujari holding a bell in his left hand and then along with *Hardas* and *Dange* going round waving the incense and the light round smaller deities, at the evening *dhuparti,* of bringing a ready filled incense burner and waving lamp which are afterwards carried and waved round the minor deities as in the morning, of taking *ekarti* and ashes in a cloth and going round the east of the town, putting ashes on pilgrims' brows and showing them the lamp and of receiving presents, of bringing water for bathing the idol at the *panchamrit puja,* and the *yajman's panchamrit puja* (but not other *pujas* whether daily or *yajman's*), of providing incense and wicks for the *yajman pujas* and of assisting the *pujari* by handing over the arti at the relevant time of performing *nitya* or daily or *naimittik* or occasional services in the Temple of God *Vitthal;* and of appropriating and receiving income from the exercise of such hereditary right and privilege including the right of taking all metal pots, *arti* vessels and bells given by devotees to them or for use of the idol provided that the same are put into his hands by the devotees-- being a hereditary right and privilege recognised by the decision of the High Court in Appeal No.1 of 1890, *Gopal Trimbak Paricharak and another* vs. *Gangaram Babaji Badve and others* and in appeal No.5 of 1890, *Gangaram Babaji Badve* vs. *Gopal Trimbak Paricharak and another;* 1891 P.J.138; and includes any other rights and privileges claimed or exercised under any order or decree of any court or otherwise ;

(zb) ***"Sevadharis"*** in relation to *sevas* or services performed in the Temple of ; God *Vitthal* means the persons who are known as "*pujaris*", "*Benaris*", "*paricharaks*", "*Dingres*", "*Danges*", "*Diwates*" and "*Hardas*";

(ze) ***"Utpat"*** means the person who, being in exclusive charge of the Temple of the Goddess *Rukmini* and the *Parivar Devatas* thereof, exercises the hereditary right and privilege of performing *nitya* or daily or *naimittik* or occasional services in that Temple and of appropriating or receiving income from the exercise of such hereditary right and privilege, and includes a *Divaskari Utpat* ;"

105. We may now straightaway turn to Section 3 of the Act.

Under this provision, the authorised officer is bestowed with the power to decide certain issues referred to therein such as whether any person is belonging to particular priestly class or he has any hereditary right or privilege to exercise in or in relation to any of the temples etc. On the finding given by the Courts below that the priestly classes have no autonomous machinery to exercise disciplinary powers, it is incomprehensible as to how the State would be denuded from legislating on the matters provided in Section 3. At any rate, the questions that are required to be decided by the authorised officer specified in Section 3 of the Act cannot be said to be the matters of religion or activity associated with religious practice. Assuming that the power bestowed on the authorised officer is associated with religious practice, even then, it not being essential part of the religion and indubitably, a secular activity, the State was competent to legislate on such matters so as to provide for regulation or restriction in that behalf. It was argued that this provision is unreasonable, as the affected person will be subjected to this special mechanism for adjudication of his claim. As observed in the earlier part of this Judgment, the State

Legislature has attempted to enact this law on all related matters to make it a self contained code. This provision has nexus with the avowed object of the Act. Besides, it is a matter of legislative policy. If so, the grievance that the scheme of this provision is unreasonable, cannot be countenanced. Moreover, the challenge to Section 3 of the Act cannot be entertained at least in the context of Article 25 or for that matter, Article 26 of the Constitution.

106. We shall now come to Section 4 of the Act which is the bone of contention in the present proceedings. While interpreting the crucial provisions which are impugned in this proceedings, as observed in **Nathdwara Temple's case (supra)** in Paragraph 40, the Court will have to bear in mind that if two constructions are reasonably possible, then it is necessary that the construction which upholds the validity of the Act rather than the one which affects its validity should be preferred, particularly when the validity of any legislative enactment is impugned on the ground that its material provisions contravene one or the other of the fundamental rights guaranteed by the Constitution. Bearing this rule of

construction in mind, let us examine whether any part of Section 4 of the Act violates right of freedom of religion. That can be appreciated only after ascertaining the nature of restriction imposed by this provision on the recognized hereditary rights and privileges of the priestly classes. Before proceeding further, it is appropriate to advert to Section 4, which reads thus :

> **"4.(1)** With effect from the appointed day, notwithstanding anything contained in any law (including any rule, regulation and by-law for the time being in force in relation to any of the Temples), custom or usage, any order of any ruling authority for the time being, settlement, grant, sanad, or order any decree, order or scheme in relation to any of the temples made by any court,-
>
> (a) the hereditary rights and privileges of *Badves, Utpats* or any committee or of any person to manage the affairs of the endowment and the registered trusts (including the hereditary right of *Badves* to be the chief priest, managers, guardians and overseers of the idol, Temples and property thereof; and
>
> (b) all the hereditary rights and privileges of *Badves, Utpats, Sevadharis, Kshetropadhyes, Kolis* and other to receive demand and appropriate the income from the offerings made to any deity in the Temples including their respective *Parivar Devatas*, income from the *pujas* performed for or on behalf of *yajmans* (that is, the devotees or pilgrims), income from the right of applying *gandh* or giving *prasad* to *yajmans*, income from any share in the amount received from the *yajmans* by any committee or *Sevadharis,* income from *pujas, upchars* and the like or *dakshinas* demanded or income derived from any source in or in relation to the Temples or use thereof; and
>
> (c) the hereditary right and privilege of *Badves, Utpats,*

> *Sevadharis, Kshetropadhyes, Kolis* and others to perform *nitya* or daily or *naimittik* or occasional *sevas* or services to the deities on behalf of *yajmans* or pilgrims in any of the Temples, which they were performing immediately before the appointed day (hereinafter collectively referred to as the hereditary rights and privileges), are hereby abolished; and thereupon all those hereditary rights and privileges, subject to the provisions of this Act, shall be deemed to be acquired and vested in the Committee.
>
> **(2)** The Committee or Devasthan Committee formed under rule V of the rules for the management of the property of the idol *Vitthal*, approved by the High Court in *Sakharam Bhimaji Benare and others vs. Gangaram Babaji Badve and others in* Appeal No.141; and *Gangaram Babaji Badave and others* (original defendants) vs. *Sakharam Vaman* (with the consent of the Advocate General) *and others* (original plaintiffs) in Appeal No.168 (1896, P. J. 644), the Samastha Badve Mandal, the Samastha Badve Samaj, the Utpat Committee, if any, or any other body by whatever name called, functioning in relation to the endowment or registered trusts immediately before the appointed day shall cease to function; and all their powers, duties, rights and privileges, if any, in relation to the endowment and the registered trusts, shall vest in the Committee."

107. For considering the challenge on the touchstone of Article 25 of the Constitution, it is apposite to ascertain the sweep of Section 4 of the Act. From the plain language of that Section, it is amply clear that, Section 4 in no manner intrude upon any of the religious rights guaranteed to the priestly classes as such. The meaning of religious rights and matters for the purpose of religion is well known. It is also well established that even if it is a matter

for the purposes of religion, the same would be protected as guaranteed by the Constitution. What is matter of religion is expounded in **Shirur Mutt' scase (supra).** It is held that it embraced not merely matters of doctrine and belief pertaining to the religion but also the practice of it, or to put it in terms of Hindu theology, not merely its *Gnana* but also its *Bhakti* and *Karma Kandas*. It is noted that if the tenets of religious sect prescribe that offerings offered should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and protected by Article 26 (b) of the Constitution. However, in cases which are not covered by Article 26 – not being religious denomination or section thereof, in regard to the matters associated with religious practices, the State is free to regulate or restrict the same for the excepted parameters such as economic, financial, political or other secular activity and for social welfare, reform or throwing open of Hindu religious institutions of public character. In a recent decision in the

case of **Commissioner of Police v. Acharya Jagadishwarananda Avadhuta reported in (2004) 12 SCC 770** on the question as to what constitutes an integral or essential part of religion is expounded in Paragraph 9 as under:

> "9. The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains a guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion. (See generally the Constitution Bench decisions in *Commr., H.RE. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, Sardar Syedna Taher Saifuddin Saheb v. State of Bombay and Seshammal v. State of T.N.* regarding those aspects that are to be looked into so as to determine whether a part or practice is essential or not.) What is meant by "an essential part or practices of a religion" is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one's religion has changed from a

> particular date or by an event. Such alterable parts or practices are definitely not the "core" of religion whereupon the belief is based and religion is founded upon. They could only be treated as mere embellishments to the non-essential (*sic* essential) part or practices." (emphasis supplied)

108. Reverting to Section 4 of the Act, the first part of clause (a) of Section 4(1) pertains to the recognized rights and privileges of *Badves*, *Utpats* or any Committee or any person "to manage the affairs" of the endowment and the registered trusts. Insofar as the rights concerning the management and affairs of the endowment and the registered trusts are concerned, the same have been held to be secular activities; in respect of which it is open to the State

to regulate or restrict the same, subject to reasonable restrictions. This is the established position. [*See* ***Shirur Mutt's case (supra), Nathdwara Temple's case (supra)-paragraph 61, Kakinada Annadana Samajam' s case (supra)].*** Suffice it to observe that there is no substance in the challenge to this part of Section 4(1) (a), either on account of Article 25 or Article 26 of the Constitution, as the case may be.

109. With regard to the latter part of clause (a) of Section 4(1) of the Act, the same deals with the hereditary rights of *Badves* to be the Chief Priests, managers, guardians and overseers of the idol, temples and property thereof. By the very nature of description of the activities that are performed by *Badves,* would indicate that the same are secular activities. If any decision is required on this point, we can usefully refer to the exposition in the case of **Shirur Mutt' s case (supra).** In paragraph 17 of this decision, the Apex Court has held that administration of property by a religious denomination has been placed on a different footing from the right to manage its "own affairs in the matters of religion". The latter is a fundamental or absolute right, whereas the former can be regulated by laws which the Legislature can validly impose. It is further held that, it is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion.

110. There can be no doubt that the role of manager,

guardian and overseer of the idol, temple and property is purely secular activity. Indeed, one of the role ascribed to *Badves* is also of chief priests. Though the *Badves* have been described as chief priests, but the nature of activities performed by them is to manage the idol, temple and property belonging thereto and to keep order and to bid the *Sevadharis* perform their duties which belong hereditarily to those priests. They are not the religious heads nor owners of the temple. The evidence does indicate that they have right to share the offerings made to the deity; that is not because they are owners of the temple or that they are religious heads or spiritual *gurus,* but to compense them for the duty or service of managing the temple, properties and to keep order as also to bid the *Sevadharis* perform their duties. It has come in evidence as rightly found by the Courts below that *Badves* merely facilitate conduct of *puja* and rituals and provide services to the devotees, pilgrims visiting the temples for consideration. That obviously is not a matter of religion as such, but a secular activity or an activity associated with religious practice which has economic and financial angle. We have already affirmed the

finding of fact recorded by two Courts below that neither the temples at Pandharpur nor the priestly classes constitute religious denomination or section thereof. Moreover, as is found earlier, the legislative intent of enacting impugned Act was to regulate or restrict such activities associated with the religious practice which were not matters of religion, to bring about social welfare and reform. On this reasoning, the challenge to clause (a) of Section 4 (1) at the instance of *Badves* and *Utpats* or any Committee or of any person who was earlier authorised to manage the affairs of the endowment and the registered trusts, including the hereditary rights of *Badves* to be the chief priests, guardians, managers, overseers of the idol and property thereof, cannot be said to be ultravires the Constitution.

111. Besides, as observed in **Nathdwara Temple's case (supra)**-paragraph 34, the order passed by the then ruler provides for the role of the priestly classes, for which reason, they cannot claim better or higher rights after the said order. In the case of **Kakinada Annadan Samajam (supra),** it is held that the

hereditary trustees of the institutions have only a bare right to manage and administer the secular estate of the institution or the endowment and they do not have proprietary or beneficial interest either in the corpus or in the usufruct of the estate.

112. The Apex Court in the **Raja Bira Kishore Deb-Jagannath Temple's Case (supra)** considered the claim of *Adya Sevak*- that his rights as *Adya Sevak* were being contravened by the Act under challenge. The Court took into account the fact that the temple occupies a unique position in the State and was a temple of national importance and no other temple in that State can compare with it. The Government after noticing the serious irregularities had to intervene on various occasions, just as in the present case. As the administration further deteriorated, it became expedient to introduce the Scheme of the management of the affairs of the temple and its property and provide for better administration and governance in supersession of all provisions, laws, regulations and arrangements, having regard to ancient customs and usages and the unique and traditional *nitis* and rituals contained in the record

of the rights prepared under the 1952 Act. The Legislature took away the secular management of the temple from the sole control of one person and vested in a Committee. Indeed, under that Act, the *Adya Sevak* was continued to be the part of the management, by appointing him as Chairman of the Committee. The principle, however, evolved is that all that has happened is that his sole superintendence or secular activity has gone and invested in a Committee. Even in that Act, the Committee was to arrange for the proper performance of *sevapuja* and of the daily and periodical *nitis* of the Temple in accordance with the record of rights. The Court held that such activity was a secular function.

113. As observed in **Seshammal & Others etc.etc. v. State of Tamil Nadu reported in 1972 (2) SCC 11** (Paragraph 21), the *Archaka* (priest) has never been regarded as a spiritual head of any institution. He is a servant of the temple. The Apex Court in this decision has quoted with approval decision reported in **ILR 35 Mad. 631** in the case of **K.Seshadari Aiyangar v. Ranga Bhattav,** wherein it was held that the position of the hereditary *Archaka* of a

temple is that of a servant subject to the disciplinary power of the trustee. He owes his appointment to a seculiar authority. That the son of an *Archaka* or the son's son has been continued in the Office from generation does not make any difference to the principle of appointment and no such hereditary *Archaka* can claim any right to the Office. After referring to decisions of the other High Courts, the Court went on to observe as follows:

> "Thus the appointment of an *Archaka* is a secular act and the fact that in some temples, the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular....."

114. Significantly, in the case of **Sheshammal (supra**), the challenge was made to the abolition of hereditary right of *Archaka* in relation to a denominational temple. Similarly, the exposition in **Venkataramana Devaru (supra)** is also in relation to a denomination temple, which had a right to exclude persons who are not entitled to participate in the worship according to the tenets of the institutions in terms of Article 26(b) of the Constitution. In Paragraph 28 of the same decision, the Apex Court has noted that

Article 25(2) is very wide which not only controls rights of individuals under Article 25(1) but also rights of committees under Article 26(b). It then proceeded to hold that Article 25(2)(b) must necessarily be subject to some limitations or regulations. To put it differently, therefore, temples which are not denominational temples and are religious institution of a public character without qualification or reserve are controlled by the rigours of Article 25 (2).

115. Suffice it to observe that on conjoint reading of Section 4(1)(a) and Section 2(c), the description assigned to *Badves* as chief priests in the impugned Act is in relation to 'bid the Sevadharis" to perform the duties which belong hereditarily to those priests. The sweep of the provision is to regulate and restrict the hereditary rights and privileges of the priestly classes in relation to the service to the deity or duty performed by them in the temples, which activities are enjoyed by them ascribable to sovereign act and is a secular matter. The provisions of the Act, in no manner, control or affect the rights of *Badves* to freedom of

religion to profess, practise and propagate religion or for that matter, to manage their own affairs in matters of religion. Thus understood, it would neither affect their rights under Article 25 or Article 26 of the Constitution.

116. In substance, clause (a) purports to affect the hereditary rights and privileges of *Badves, Utpats* or any Committee or of any person "to manage the affairs" of the endowment and the registered trusts including the hereditary rights of *Badves* to be the chief priests, managers, guardians, overseers of the idol, temple and property thereof. Having regard to the line of decisions of the Apex Court, the irresistible conclusion is that this provision, if at all, affects the secular activity of *Badves, Utpats,* or any Committee or of any person who was earlier competent to manage the affairs of the endowment and the registered trusts in whatever capacity. Even in the case of religious denominational institutions, the Apex Court has ruled that the activities such as the activities undertaken by the priestly classes referred to in clause (a) of Section 4(1) were secular activities; and legislation so as to regulate and

restrict the same, was permissible.

117. Then comes the regulation or restriction in respect of the hereditary rights and privileges of *Badves, Utpats, Sevadharis, Kshetropadhyes, Kolis* and others (1) to receive, demand and appropriate the income from the offerings made to any deity in the temples including their respective *Parivar Devatas*, (2) income from the *pujas* performed for and on behalf of *Yajmans* (i.e. the devotees or pilgrims), (3) income from the right of applying *gandh* or giving *prasad* to *yajmans,* (4) income from any share in the amount received from the *yajmans* by any committee or *sevadharis,* (5) income from *upchars, pujas* and the like or *dakshinas* demanded, or (6) income derived from any source in or in relation to temples or use thereof.

118. From the plain language of Section 4(1)(b), it would appear that the same is enacted with a view to regulate or restrict economic, financial and secular activities associated with religious practice. Insofar as the facts of the present case, both the

Courts below have found on analysing the evidence on record that no evidence is forthcoming that such rights and privileges enjoyed by specified priestly classes were essential part of the religion. Indeed, the said rights and privileges have been recognized for long time ascribable to sovereign act or pleasure. That position is indisputable. It has been accepted even by the Legislature as can be noticed from the definition of the respective priestly classes in Section 2 of the Act. The Legislature, however, in its wisdom, thought it necessary to enact a law to regulate or restrict such economic, financial, secular matters which were associated with religious practice. In strict sense, demanding income for or out of any religious practice cannot be said to be an essential part of religion, unless proved to the contrary. As mentioned earlier, there is no evidence to show that demanding income or entitlement to receive income for any such activities was essential part of the religion of the priestly classes, or for that matter, the devotees or pilgrims. Even if the priestly classes were to be held as constituting religious denomination or any section thereof, they could not have succeeded in their argument that such activities

were protected by the Constitution. On the other hand, as the activities referred to in clause (b) of Section 4(1), on the basis of which the priestly classes claim rights and privileges to receive and appropriate income, the same being economic, financial and secular matters associated with the religious practice could be regulated and also restricted by law made by the State Legislature.

119. Insofar as the offerings made to any deity in the temples including their respective *Parivar Devatas*, it cannot be gainsaid that the same is the property of any of the priestly classes as such. Offerings made to the deity, in law, is the property of the deity. In Paragraph 40 of the **Nathdwara Temple's case (supra)**, the Apex Court considered similar challenge and rejected the same. It is expounded that if the temple is a public temple, under the Hindu Law, the idol is a juridical person and so, the ownership of the temple and all its endowments including offering made before the idol constitute the property of the idol. In the case of **Kashi Vishwanath Temple's case (supra) – Paragraphs 34 & 43)**,

similar plea has been answered against the priestly class. A priori, the longstanding privilege enjoyed by the priestly classes to share part of the offerings made to the deity in return of services rendered by them to the deity would make no difference, nor denude the State from making law so as to regulate and restrict such matter. The law provides for creation of a temple fund. The offering made to any deity in the temples including their respective *Parivar Devatas* being the property of the deity, will form part of the temple's fund as constituted under Section 43 of the Act. The erstwhile rights and privileges of the priestly classes to receive, demand and appropriate the income from the offerings made to any deity stood extinguished on coming into force of the present Act. Suffice it to observe that no evidence is forthcoming to show that to receive, demand and appropriate the income from the offerings made to any deity is the essential part of the religion or for the purpose of religion of either the priestly classes or the devotees or pilgrims. In absence thereof, the validity of the provisions depriving the priestly classes of their hereditary rights and privileges to receive, demand and appropriate the income from

the offerings made to any deity in the temples, is not affected. Rather, such legislation is secured by the sweep of permissible regulations and restrictions under Article 25 of the Constitution.

120. Insofar as provision restricting the priestly classes from receiving, demanding and appropriating the income from the *pujas* performed for and on behalf of *Yajmans* i.e. devotees and pilgrims, same logic would apply as in the case of first category of deprivation of income of the priestly classes. The Courts below have found as of fact that there was no evidence to prove that preforming *pujas* for and on behalf of *Yajmans* (i.e. the devotees or pilgrims) was essential part of religion. Performing *pujas* for and on behalf of others for consideration, therefore, would at best, be a vocation or occupation, pursued by the priestly classes. In fact, the priestly classes have asserted that to perform *pujas* for and on behalf of *yajmans* was right guaranteed to them under Article 19(1)(g) of the Constitution. As is observed earlier, there is no evidence that performing such *pujas* for and on behalf of *yajmans* is a matter of religion or for the purpose of religion of the priestly classes.

While dealing with the claim of the priestly classes under Article 19 (1)(g) of the Constitution, it is already held that the enactment is in the interests of the general public. While testing the argument of the Appellants in the context of Article 25 of the Constitution, I have no hesitation in taking the view that the State is competent to legislate on the matter of depriving the priestly classes of their right to receive, demand and appropriate income from the *pujas* performed by them for and on behalf of *yajmans* in the precincts of the temples, which would be in the nature of regulating or restricting economic, financial or secular activity associated with the religious practice and also to provide for social welfare and reform. For this, the background in which the State was required to to enact the law on the subject will assume relevance. We have already noticed that there were large number of complaints of exploitation and misbehaviour reported by the devotees against the priestly classes in the temples at Pandharpur on the basis of which the State eventually appointed Commission to examine all related matters, who in turn, had found merits in the complaints and recommended amongst others, bringing legislation on the

subject. If the State could legislate restricting or depriving the priestly classes from continuing with the *puja* performed by them in the temples for an on behalf of *yajmans*, the provision in question is only sequel to the extinguishment of that right.

121. The regulation or restriction brought about in respect of income of the priestly classes from the right of applying gandh or giving *prasad* to *yajmans* challenged hitherto will have to be negated on the same reasoning as indicated above. The other area in respect of which regulation and restriction has been imposed is on the income from any share in the amount received from the *yajmans* by any Committee or Sevadharis, which also will have to be negated on the same reasoning.

122. Lastly, clause (b) of Section 4(1) of the Act abolishes all the hereditary rights and privileges of the priestly classes specified therein to receive, demand and appropriate the income from the offerings made to any deity in the Temples including their respective *Parivar* Devatas, income from the pujas performed for

or on behalf of yajmans (i.e. the devotees or pilgrims), income from the right of applying gandh or giving prasad to yajmans, income from any share in the amount received from the yajmans by any committee or *Sevadharis,* income from *pujas, upchars* and the like or *dakshinas* demanded or income derived from any source in or in relation to the Temples or use thereof. This restriction is to cover all situations and circumstances under which the priestly classes may receive, demand or appropriate income or *dakshina* by whatever name called from whatever source, from *pujas, upchars* and the like within the precincts of the specified temples. Only by making such provision, the law enacted on the subject of restricting the priestly classes to perform any activities or render any services to the deities on behalf of *yajmans* or pilgrims in any of the temples covered by the Act would become meaningful. As indicated earlier, the background in which the Act has come into being, will have to be kept in mind. The avowed purpose of the Act was to bring about social welfare and reform as also to regulate economic, financial and other secular matters associated with the religious practice in the Temples. To achieve that objective, the only course

open was to introduce such regulations and restrictions depriving the priestly classes from performing any *pujas* or services to the deities on behalf of *yajmans* or pilgrims in any of the temples covered by the Act, as the same were not matters of religion of the priestly classes or for that matter, the Yajmans or Pilgrims. As a result, it was necessary to clearly provide that the priestly classes shall not receive, demand and appropriate the income either from the offerings made to the deity in the temple or for any *puja*, *sevas* or services to the deities on behalf of *yajmans* or pilgrims in any of the temples. Then alone, the mischief which was prevalent could be eradicated. Thus understood, the provisions of clause (b) of Section 4(1) of the Act are perfectly reasonable and within the parameters specified by Article 25 of the Constitution and therefore not ultravires the Constitution.

123. That takes us to the challenge to clause (c) of Section 4 (1) of the Act. By that provision, the hereditary rights and privileges of specified priestly classes to perform *nitya* or daily or *naimittik* or occasional *sevas* or services to the deities on behalf of

yajmans or pilgrims in any of the temples, which they were performing immediately before the appointed day, have been abolished and acquired and vested in the Committee established under Section 21 of the Act. As is observed earlier, the lower Courts have found that there is no evidence to show that *pujas, sevas* or services to the deities or on behalf of *yajmans* or pilgrims in any of the temples by the priestly classes is matter of religion or for religious purpose. That right in fact has been asserted by the priestly classes to be one protected by Article 19(1)(g) of the Constitution and not as matter of religion or for the purpose of religion as such. Merely because the priestly classes have been performing *pujas, sevas* or services to the deities on behalf of *yaj*mans or pilgrims in the temples at Pandharpur from time immemorial, that by itself, does not mean that the said activities were matters of religion associated with the Temples or for that matter for the purpose of religion of the priestly classes. The evidence on record does not support that position. The Courts below have also found that the tenets of *Warkari Sampradaya* do not recognize performing *pujas* as performed by the priestly

classes for and on behalf of yajmans in these temples. To profess *Bhagvad Dharma,* no intermediary is required, as has been found by the Courts below. The irresistible conclusion, therefore, is that performing *pujas* or *sevas* or services to the deities "on behalf of *yajmans* or pilgrims" in the temples, in no case, affects matter of religion associated with the Temples or for the purpose of religion of the priestly classes. The Legislature in its wisdom, therefore, thought it necessary to regulate and restrict the rights of the priestly classes to undertake such activities keeping in mind the contemporary situation and the overwhelming complaints of the devotees and the pilgrims about the exploitation and misbehaviour. The provision was necessitated in the interests of general public. As is noted earlier, the right referred to in clause (c) at the highest is referable to right under Article 19(1)(g) of the Constitution. Assuming that such right can be pressed into service also for the purpose of Article 25 of the Constitution, it is well established that right under Article 25 is not an absolute right. There can be regulation or restriction which can include deprivation of any activity associated with religious practice for restricting

economic, financial, political or other secular aspects including for providing social welfare and reform in Hindu religious institutions of a public character, which is open to all classes and sections of Hindus. Accordingly, the challenge to clause (c) of Section 4(1) should also fail.

124. Indeed, in the case of **Ratilal Panachand Gandhi (supra),** in Paragraph 13, the Apex Court observed that the tenets of the religion may lay down certain rites and ceremonies to be performed at certain times in a particular manner, those are not secular activities pertaining commercial or economic character. Further, no outside authority of the State has any right to say that these are not essential parts of religion and restrict or prohibit the same in the guise of administration the trust estate. However, in that case, the Court was concerned with the rights of religious denomination as protected by Article 26 of the Constitution. In the present case, I have already negatived that claim. Moreover, none of the principal provisions of the impugned Act touch upon any of the matters of religion of the priestly classes.

125. In similar situation, the Apex Court in its recent decision in the case of **N.Adithayan v. Travancor Devaswom Board & Ors. reported in 2002 (8) SCC 106**, rejected the argument that only *Malayala Brahmin* priests be appointed in the Hindu Temple, which was not a denominational temple. The Apex Court on considering the earlier decisions on the point in the case of ***Shirur Mutt (supra), Venkataramana Devaru (supra), Tilkayat or Nathdwara Temple (supra), Sheshammal (supra), Shastri Yagnapurushdasji (supra), Bhurinath (supra), Sri Adi Visheshwara of Kashi Vishwanth Temple v. State of U.P. reported in 1997 (4) SCC 606***; observed in paragraphs 17 and 18 as under :

> "**17.** Where a temple has been constructed and consecrated as per Agamas, it is considered necessary to perform the daily rituals, poojas and recitations as required to maintain the sanctity of the idol and it is not that in respect of any and every temple any such uniform rigour of rituals can be sought to be enforced, dehors its origin, the manner of construction or method of consecration. No doubt only a qualified person well versed and properly trained for the purpose alone can perform poojas in the temple since he has not only to enter into the sanctum sanctorum but also touch the idol installed therein. It therefore goes without saying that what is required

and expected of one to perform the rituals and conduct poojas is to know the rituals to be performed and mantras, as necessary, to be recited for the particular deity and the method of worship ordained or fixed therefor. For example, in Saivite temples or Vaishnavite temples, only a person who learnt the necessary rites and mantras conducive to be performed and recited in the respective temples and appropriate to the worship of the particular deity could be engaged as an Archaka. If traditionally or conventionally, in any temple, all along a Brahmin alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahmin is prohibited from doing so because he is not a Brahmin, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private temples. Consequently, there is no justification to insist that a Brahmin or Malayala Brahmin in this case, alone can perform the rites and rituals in the temple, as part of the rights and freedom guaranteed under Article 25 of the Constitution and further claim that any deviation would tantamount to violation of any such guarantee under the Constitution. There can be no claim based upon Article 26 so far as the Temple under our consideration is concerned. Apart from this principle enunciated above, as long as anyone well versed and properly trained and qualified to perform the pooja in a manner conducive and appropriate to the worship of the particular deity, is appointed as Santhikaran dehors his pedigree based on caste, no valid or legally justifiable grievance can be made in a court of law. There has been no proper plea or sufficient proof also in this case of any specific custom or usage specially created by the founder of the Temple or those who have the exclusive right to administer the affairs — religious or secular of the Temple in question, leave alone the legality, propriety and validity of the same in the changed legal position brought about by the Constitution and the law enacted by Parliament. The Temple also does not belong to any denominational category with any specialized form of worship peculiar to such denomination or to its credit. For the said reason, it becomes, in a sense, even unnecessary to pronounce upon the invalidity of any such practice being violative of the

constitutional mandate contained in Articles 14 to 17 and 21 of the Constitution of India.

18. In the present case, it is on record and to which we have also made specific reference in the details of facts showing that an institution has been started to impart training to students joining the institution in all relevant Vedic texts, rites, religious observances and modes of worship by engaging reputed scholars and Thanthris and the students, who ultimately pass through the tests, are being initiated by performing the investiture of sacred thread and gayatri. That apart, even among such qualified persons, selections based upon merit are made by the Committee, which includes among other scholars a reputed Thanthri also and the quality of the candidate as well as the eligibility to perform the rites, religious observances and modes of worship are once again tested before appointment. While that be the position, to insist that the person concerned should be a member of a particular caste born of particular parents of his caste can neither be said to be an insistence upon an essential religious practice, rite, ritual, observance or mode of worship nor has any proper or sufficient basis for asserting such a claim been made out either on facts or in law, in the case before us, also. The decision in *Shirur Mutt case*[1] and the subsequent decisions rendered by this Court had to deal with the broad principles of law and the scope of the scheme of rights guaranteed under Articles 25 and 26 of the Constitution, in the peculiar context of the issues raised therein. The invalidation of a provision empowering the Commissioner and his subordinates as well as persons authorized by him to enter any religious institution or place of worship in any unregulated manner by even persons who are not connected with spiritual functions as being considered to violate rights secured under Articles 25 and 26 of the Constitution of India, cannot help the appellant to contend that even persons duly qualified can be prohibited on the ground that such person is not a Brahmin by birth or pedigree. None of the earlier decisions rendered before *Seshammal case*[4] related to consideration of any rights based on caste origin and even *Seshammal case*[4] dealt with only the facet of rights claimed on the basis of hereditary succession. The attempted exercise by the learned Senior Counsel for the appellant to read into the decisions of this Court in *Shirur Mutt case*[1] and others

> something more than what it actually purports to lay down as if they lend support to assert or protect any and everything claimed as being part of the religious rituals, rites, observances and method of worship and make such claims immutable from any restriction or regulation based on the other provisions of the Constitution or the law enacted to implement such constitutional mandate, deserves only to be rejected as merely a superficial approach by purporting to deride what otherwise has to have really an overriding effect, in the scheme of rights declared and guaranteed under Part III of the Constitution of India. Any custom or usage irrespective of even any proof of their existence in pre-constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament. No usage which is found to be pernicious and considered to be in derogation of the law of the land or opposed to public policy or social decency can be accepted or upheld by courts in the country."
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> (emphasis supplied)

126. To my mind, none of the priestly classes, be it *Badves, Utpats* or *Sevadharis*, can complain of infraction of rights guaranteed under the Constitution of freedom to profess, practise and propagate religion. Their personal rights so guaranteed have remained unaffected by Section 4(1)(c) of the Act. The priestly classes are free to continue with their daily routine worship and religious practise, which is personal to them and doing it as duty to the God. To put it differently, the activity performed before the appointed day of *nitya* or daily or *naimittik* or occasional *sevas* in

terms of Section 2(g) read with Schedule A of the Act or in Section 2(t) read with Schedule B of the Act are services offered in relation to the deity and the temples. There is nothing in the Act to prevent the priestly classes from remaining present in the Temples when the *sevas* or *pujas* offered to the deity are performed by the priest appointed by the Committee. It is accepted position that only the representatives of the priestly classes perform the *pujas* or *sevas* to the deities, not all of them together. It is possible that the Committee may consider to appoint someone amongst them to perform the customary *pujas* or *sevas* to be offered to the deity. Indeed, such appointment will be owed to the secular authority. In any case, priestly classes are entitled to perform rituals in the Temples themselves which are personal to them. This, they can do as any other devotee. All that the Act does is to abolish their specified hereditary rights and privileges which were secular activities. Notably, none of the priestly classes have argued that the daily or *nitya* services in the Temples in question as specified in Schedule `A', are departure from the customary rituals performed by them before the appointed day in the respective

Temples. There is no pleading nor any proof in that regard. If it is so, it is unfathomable as to how the provisions of the Act can be assailed on the ground of interfering with the matter of religion at all. Those activities will now be regulated and administered by the Committee established under Section 21 of the Act. Similarly, the activity of doing service to the deities on behalf of *yajmans* or pilgrims in any of the Temples- being personal services extended to the *yajmans* for remuneration - do not affect the rights of the priestly classes guaranteed under the Constitution as such. Even those matters will be regulated and administered by the Committee established under Section 21 of the Act. Counsel for the priestly classes would contend that expression “or other secular activity” occurring in Article 25(2)(a) necessarily mean related to economic, financial or at the highest, political matters. It is argued that the expression secular cannot permit legislation on matters of religion such as performance of *nitya* or daily or *naimittik* or occasional *sevas* or services to the deities on behalf of *Yajmans* or pilgrims. This argument overlooks that the position of a person performing specified *pujas* or *sevas* to the deities in the capacity of priest or

even a chief priest in a public temple, owes his appointment to a secular Authority. As is well established, restricting such right by a competent Legislation is permissible. Similarly, the *Yajmans* or pilgrims can insist for performing services to the deities themselves or through intermediary but as per the regulations in vogue. That will come within the domain of secular matter concerning administration of and managing the affairs of the temples and its properties. The *Sevadharis* would contend that they are not the servants of anybody and have right to remain present from *Kakad Aarti* to *Shezarti* in the Temples. In the first place, this submission overlooks that the record establishes that the *Sevadharis* were under the control of *Badves*. For, one of the duty performed by *Badves* was to bid the *Sevadharis* perform the duties which belong hereditarily to those priests. In any case, as is observed earlier, the Act does not affect the fundamental rights of any priestly class which is personal to them. They are free to remain present when the *pujas* or *sevas* to the deity are performed by the priests appointed by the Committee, as any other devotee. They can also perform rituals in the Temples themselves which are personal to

them like any other devotee. The Temples being Public Temples, the State is competent to bring in Legislation to restrict or regulate the specified activities associated with religious practise.

127. On the above reasoning, even the argument of the priestly classes that the Act purports to affect the matters of religion which are inextricably mixed up with secular matters does not commend to me. Neither the preamble nor any of the main provisions such as Section 4 of the Act transgresses upon any of the guaranteed fundamental rights of the priestly classes. This Legislation is surely not a composite Legislation covering the secular as well as religious matters as is contended. None of the clauses of Section 4(1) deal with any matter concerning the religion of the priestly classes as such. Nor it affects the matters of religion concerning the Temples or for that matter, the devotees or pilgrims. As is rightly contended by the Respondents, from the pleadings in the plaint, it can be discerned that the assertion is that historically we (the priestly classes) were doing such *pujas*; we are entitled to do it and we alone will do it. Such a stand cannot be

countenanced in respect of a public temple such as the Temples in question *(see* ***N.Adithayan' s case (supra)-Paragraph 18).*** Whereas, such an argument proceeds on the assumption that the Temples at Pandharpur are religious denominational institutions or Temples. That plea has already been considered and rejected. As is common ground, the Temples at Pandharpur are public temples-where any devotee or pilgrim, irrespective of caste or creed, can enter the sanctum sanatorium of the temple and touch the idol by doing *padasparsha puja, t*he devotees or pilgrims are entitled to do *puja* on their own or with the help of some other person, not necessarily the priestly classes. For, there is no evidence of dedication of temples to particular class or community or regarding the exclusion of any devotee.

128. So far as Section 4(2) is concerned, the same was challenged not in the context of Articles 25 or 26 of the Constitution, but being violative of Article 19(1)(c) of the Constitution. I have already considered that aspect in the earlier part of this Judgment. In the first place, rights guaranteed under Article 25 of the

Constitution are personal to a person to profess, practise and propagate religion. That protection cannot be invoked by Association of priests namely the Committees/Samitis. In any case, this provision does not deal with any matter of religion or for the purpose of religion of the priestly classes as such. The same deals purely with the secular aspect of administration of the endowment or registered trusts. In such a case, those matters can be regulated by the State even if it were to be activity associated with religious practice.

129. That takes us to the challenge to the provisions of Section 5 of the Act. As I have already upheld the constitutional validity of Section 4 of the Act, the argument advanced in respect of Section 5 will have to be necessarily rejected. This is so because Section 5 merely provides for the consequences of abolition of rights and privileges of priestly classes referred to in Section 4 of the Act. Once it is found that the State was competent to make law on the subject of abolition of specified hereditary rights and privileges of the priestly classes referred to in Section 4

of the Act, the modalities provided for in Section 5 of the Act being only consequential steps taken to introduce new dispensation to replace the earlier one, cannot be taken exception to. No new right is vested in the new dispensation by virtue of Section 5 of the Act, which has not been affected by Section 4 of the Act. Section 5 (1)(a) of the Act provides for the management of the affairs of the temples, management of the endowment and the registered trusts, which has vested in the Committee. Those are secular matters for which it is open for the State to regulate the same.

130. Counsel appearing for the priestly classes forcefully argued that Section 5(1)(b) of the Act attempts to interfere with all rights which include religious rights of the priestly classes which has been enjoyed by them for time immemorial and not restricted to the rights which are abolished by virtue of Sections 4(1)(a) to 4 (1)(c) of the Act. This argument is devoid of merits. As is mentioned earlier, Section 5 is only intended to provide for the consequences on account of the lawful abolition of certain rights of priestly classes and of acquisition thereof coupled with vesting of

the same in the statutory Committee. I shall straightaway advert to Section 5 as a whole :

> "5. (1) On the abolition of the hereditary rights and privileges by section 4 and on the committees and bodies referred to in sub-section (2) of section 4 ceasing to function from the appointed day, the following consequences shall ensue, that is to say-
>
> (a) the endowment and the registered trusts, and the superintendence, direction and control thereof (including their administration, management and governance) shall stand transferred to, and vest in, the Committee; and the Committee shall be the trustee of such endowment and trusts; and accordingly, every person including any committee or body referred to in sub-section (2) of section 4 which immediately before the appointed day, has been functioning in relation to, or looking after, the superintendence, direction and control of, the endowment and registered trusts shall cease to do so, and every person in possession of any property of such endowment or trusts shall hand over all such property to the Executive Officer on behalf of the Committee; and in particular, every person in possession of the jewellery and ornaments and other valuable movable property of which the superintendence, direction and control vests in the Committee shall hand over the same to the officer in charge of the Sub-Treasury at Pandharpur within forty-eight hours of the appointed day together with a full inventory thereof; and such officer shall verify the jewellery and ornaments according to the inventory and take all steps necessary for its safe custody until the Executive Officer makes arrangements for the safe custody thereof;
>
> (b) *Badves, Sevadharis, Utpats, Kolis* and others shall cease to exercise or perform the hereditary rights and privileges, and shall not exercise or attempt to exercise any such hereditary right or privilege or in relation to the endowment or registered trusts; and in no case, shall they demand, solicit or ask for or receive or accept any remuneration either in cash or in kind or in the *precincts* of the Temples by way of *dakshina* or in any form whatsoever for exercising or performing any such hereditary rights and privileges;

(c) the Committee shall ensure the continuance of the *nitya* or daily services in the Temples without any break or hindrance or without in any way curtailing the form, dignity, grandeur or manner of *seva* or service which was being performed in relation to any deity immediately before the appointed day; and the Committee shall take particular care to ensure that, as far as possible, *darshan* of the deities is available to the devotees; and for those purposes, the Committee may appoint such person, on payment of such remuneration, and subject to such terms and conditions as the Committee may, in the interest of the better management of the Temples, determine;

The State Government shall place at the disposal of the Committee such sum as may be necessary for meeting the expenses of such services for a period not exceeding-90 days from the appointed day; and the State Government shall be reimbursed with the sum so placed at the disposal of the Committee from the Temples Fund within such reasonable period as the State Government may from time to time determine, regard being had to the finances of the Committee;

(d) all suits and legal proceedings in relation to any of the hereditary rights and privileges or in relation to the committees and bodies referred to in sub-section (2) of section 4 pending in any court or tribunal or before any authority shall abate, and no court, tribunal or authority shall, [after the appointed day,] entertain any such suits or legal proceedings.

(2) If, in obtaining possession of the properties of the endowment and registered trusts vesting in the Committee under sub-section (1), the officer in charge of the Sub-Treasury at Pandharpur or the Executive Officer is resisted or obstructed by any person,-

(a) he may make an application to the Magistrate having jurisdiction, complaining of such resistance or obstruction; and such Magistrate shall, unless he is satisfied that the resistance or obstruction is occasioned by any person claiming in good faith to be in possession on his own account or by virtue of some right independent of that of the endowment or registered trusts, make an order that the officer in charge of the Sub-Treasury or the Executive Officer, as the case may be, be put into possession. Such order shall, subject to the result of

any suit, which may be filed to establish the right to the possession of the property, be final; or

(b) he may make an application to the District Judge who shall treat the same as an application for delivery of possession under the Code of Civil Procedure, 1908 and shall dispose it of in accordance with the provisions made thereunder.

(3) No suit, prosecution or other legal proceeding shall be against the Sub-treasury Officer, or the Executive Officer or any person acting under his instruction or authorises by him for anything done or purported to be done in good faith under sub-section (2);

Provided that, nothing contained in this section shall bar the institution of a suit by any person aggrieved by an order made thereunder from establishing his title to the said property.

(4) If any person being a person referred to in clause (b) of sub-section (1) exercises or attempts or causes to exercise any of the hereditary rights and privileges, or if any person fails to hand over any property, in contravention of the provisions of sub-section (1), then without prejudice to the provisions of sub-section (2), he shall, on conviction, be punished with fine which may extent to two thousand rupees."

131. So far as Section 5(1)(b) of the Act is concerned, it is essentially in two parts. The first part relates to restating the position which flows from Section 4(1)(a) of the Act. If Section 4 (1)(a) of the Act comes into play, it necessarily follows that the priestly classes shall have no right to exercise or perform any activity, which has been so abolished within the precincts of the temples. The latter part of clause 5(1)(b) deals with the rights which

are abolished by virtue of Sections 4(1)(b) and 4(1)(c) of the Act to the effect that they shall not demand, solicit or ask for or receive or accept any remuneration either in cash or in kind or in the precincts of the temples by way of *dakshina* or in any form whatsoever for exercising or performing any such specified hereditary rights and privileges. This necessarily means that the provision is related to those hereditary rights and privileges which are affected by coming into force of Section 4(1)(b) of the Act. In my opinion, the purport of Section 5(1)(b) of the Act, in no manner, transgresses the sweep of Section 4(1)(a) to 4(1)(c) of the Act.

132. With reference to clause 5(1)(c) of the Act, the argument proceeded that it authorised the Committee to ensure continuance of *pujas* and services in the temples without any break or hindrance or without in any way curtailing the form, dignity, grandeur or manner of *seva* or service which was being performed in relation to any deity immediately before the appointed day. This, contends learned Counsel, is an unguided power given to the Committee. It was also argued that matters which will be dealt with by the

Committee are essentially matters of religion or for the purpose of religion. This argument clearly overlooks that it is well established position by now that authorising Committee to make arrangement for performing *pujas* and services provision is purely a secular activity ***(see Raja Bira Kishore Deb (supra) – Paragraph 9. Also see Nathdwara Temple's case (supra) – Paragraph 41).*** Moreover, it is not an unguided power invested in the Committee. This provision will have to be conjointly read with the powers and duties of the Committee in terms of Sections 32 and 44 of the Act. The Committee is obliged to arrange for the proper performance of *nitya* or daily and *naimittik* or occasional services in the Temples and for proper conduct of ceremonies, functions and festivals therein generally, or on special occasions while ensuring that in no way the same are curtailed in form, dignity, grandeur or manner of *seva* or services which were being performed in relation to any deity immediately before the appointed day. It is thus clear that the Legislature has taken precaution to safeguard the due observance of the religious ceremonies, worship and festivals according to the custom and usage. The Scheme of the Enactment is to provide

better administration of the temples' properties and not to impinge upon the traditional religious ceremonies, worship and festivals in the temples. Rather, the Act obligates the statutory Committee to ensure that the same is observed without any let or hindrance in the same form and manner as were observed before the appointed date. This is evident from the provisions to which I shall presently refer. The Act specifies various *pujas* to be performed. Section 2 (g) of the Act defines the daily or *nitya* services and the particulars thereof are provided in Schedule `A' to the Act. Section 2(t) defines the expression occasional or *naimittik* services and the particulars thereof are provided in Schedule `B' of the Act. In that sense, it is not an unguided power but contemporaneously providing for the duty of the Committee.

133. The Courts below have taken note of the fact that none of the devotees or pilgrims or persons belonging to *Warkari Sampradaya* have come forward to challenge any of the provisions of the Act. Ostensibly, the challenge placated by the priestly classes is one of affecting right to freedom of religion or religious

matters; but, in fact, the subtle attempt is to protect the pecuniary advantages which are and have been enjoyed by the priestly classes in the past, disregarding the welfare of the devotees, pilgrims, and multitudes of *Warkaries* visiting the temples every year.

134. With reference to the latter part of Section 5(1)(c) of the Act, the argument proceeded that the Committee has been given unguided power to regulate *darshan* of the deities. The argument was two-fold. Firstly, the manner of taking *darshan* is a religious matter and cannot be allowed to be regulated at the discretion of the Committee. There is no substance in this submission. As is mentioned earlier, the provision relating to taking *darshan* of the deities by the devotees, no devotee has come forward to question this provision. In any case, the apprehension expressed by the Appellants before this Court that the Committee would change the manner of *darshan* which is prevalent as at present, is misplaced. There is nothing on record to support that position. The argument was that as per the custom and usage, the devotees take

Padasparsha Purvak darshan, which is keeping forehead on the feet of the deity. If that is the tenet of *Warkari Panth*, it will be presumptuous to assume that the Committee established under Section 21 of the Act to bring about reforms and for the welfare and well being of the devotees, will be oblivious to that position and provide for different manner than such *darshan*. Here it may be appropriate to recall the view expressed by the Commission in Chapter XX of its report regarding the provision for *Darshan*. The recommendation made by the Commission with regard to the modality of taking *Darshan* will have to be borne in mind by the Committee. Be that as it may, as and when occasion arises, challenge regarding the curtailment of customary *Darshan* can be looked into. Suffice it to observe that it is the right of devotees, if at all, which is going to be affected and none of them have come before this Court making grievance about that provision. I am conscious of the fact that the present proceedings taken out by priestly classes are in representative capacity, but essentially, the reliefs claimed by them are limited to the interests of the respective priestly classes.

135. It was then contended that the same provision (Section 5) authorises the Committee to appoint any person on such terms and conditions. This submission clearly overlooks that for regulating *darshan* to be taken by devotees, the same is a secular matter and person is not required to possess specified qualification to undertake that duty, unlike in the case of priests. Thus understood, there is no substance in the challenge to clause (c) of Section 5(1) of the Act.

136. With reference to Section 5(4), it was contended that the same is unreasonable, as it provides for criminal action against the defaulting person. In the first place, I am at a loss to understand as to how this challenge can be considered in the context of rights available under Article 25 or for that matter, Article 26 of the Constitution. Even if this provision was not to be there, no prudent person can be heard to resist from handing over the property to the authorised owner, which is the Committee. Even as per the ordinary law, that would constitute an offence and perhaps,

punishable with higher punishment than the one provided in sub-section (4).

137. That takes me to the challenge to Sections 6, 7 and 8 of the Act. Section 6 is a provision for payment of amounts for abolition of rights and privileges. Challenge to this provision has already been considered in the context of argument of violation of rights under Article 19(1)(f) and 31 of the Constitution. In other words, challenge to the abovesaid provisions is unavailable in the context of Articles 25 or 26 of the Constitution. With reference to Sections 7 and 8 of the Act, it was contended that the same was unreasonable. For, the adjudication of matter relating to the non-grant or insufficiency of the amounts for abolition or acquisition of any of hereditary rights and privileges of the aggrieved person, the only remedy was to make an application to the authorised officer. As is noted in the earlier part of this Judgment, the Legislation has covered all related matters in this Act itself. The attempt is to make it a self contained code and to provide a separate machinery for adjudication of matters relating to the claim of any person arising

on account of the abolition and acquisition of any hereditary rights and privileges in connection with the Temples. The power bestowed on the Authority is in respect of limited issues qua the Temples. There is clear nexus with the object sought to be achieved. Such Legislation cannot be termed as unreasonable. Providing for separate machinery to deal with matters related to the enactment is a Legislative policy. The grievance in this regard is, therefore, devoid of merits.

138. One of the arguments canvassed by the Counsel for the *Utpats* was that the Act makes no provision to permit the priestly classes to remain as member of the Committee. On the other hand, proviso to Section 23(1) disqualifies the persons who were entitled to claim any amount under Section 6 or Section 8 of the Act, to be appointed as member of the Committee. Moreover, the provision such as Section 22(f) providing for disqualification, if a person had acted as a legal practitioner for and against the Committee, as also clause 22(h) disqualifying a person, if he does not profess the Hindu religion, were unreasonable. I will consider

all these submissions together.

139. The constitution and composition of the statutory Committee is a matter of legislative policy. Section 21 of the Act postulates the establishment and composition of the Committee to be of twelve members. Indeed, the State Government is authorised to appoint eleven members, including the Chairman. While doing so, the State Government will be guided by the stipulations in Section 22 and 23 of the Act. That is the Legislative Scheme. The intrinsic disposition envisaged by the Legislature in these provisions is of balancing of interest of and providing representation to all sections of the persons interested in the trust and the affairs of the Temples. That will ensure participation in and management of the Temples (Trust) on democratic values or principles conducive to the dignity, grandeur and to propagate the spirit, tenets and philosophy associated with the Pandharpur Temple. Insofar as eligibility of persons who are entitled to claim amounts under Section 6 or Section 8 of the Act, to be appointed as member of a Committee, that challenge has become nonest.

The proviso expressly stipulates that the ineligibility was to operate only for a period of 15 years from the “appointed day”. As has been noticed earlier, the remaining provisions of the Act have come into force as back as on 22nd February 1985, which is the appointed day. The period of 15 years therefrom has already elapsed. That means person otherwise eligible in all other respects is now qualified to be a member of the Committee, irrespective of the fact that he has a claim under Section 6 or Section 8 of the Act. Besides, it is rightly urged by the Respondents that in the Plaint, nowhere it is stated that any of the Plaintiffs in fact desired to become member of the Committee to be constituted under Section 21 of the Act. The requirement of law that person should profess Hindu religion, cannot be taken exception to, as the law has been made governing Hindu religious institutions. Even the provisions providing for disqualification on account of person acted as a Legal Practitioner for and against the Committee is to ensure that no person who has conflicting interest with the affairs of the Committee should be member thereof. In substance, the restrictions imposed in this Act regarding membership are keeping

in mind that the members of the Committee, in no circumstance, have any conflicting interest. To put it differently, none of these provisions can be said to be unreasonable or unconstitutional being violative of any provisions of the Constitution.

140. The Counsel appearing for *Utpats* had argued that Section 32 of the Act gives unguided power to the Committee in matter of collecting daily offerings, *dakshinas, bhogs,* donations, subscriptions and the like in the temples, which is to the complete exclusion of any other person. Moreover, the latter part of Section 32(1)(b) of the Act gives power to the Committee to dispose of offerings which the Committee deems fit. In my opinion, neither the provision specifying that the Committee to collect daily offerings, *dakshinas, bhogs,* donations, subscriptions and the like in the temple, to the complete exclusion of any other person, can be said to be unreasonable or unconstitutional. That is a secular activity covered within the meaning of administration and management of the temple.

141. Insofar as the apprehension that the Committee may dispose of offerings as per discretion and would possess unguided power, this argument clearly overlooks the limitation imposed by the Act itself on the Committee to utilise the temple's fund in a particular manner. The power of Committee to utilise the offerings is circumscribed by Section 44 of the Act.

142. It was also argued that Section 32(2)(a) of the Act is unconstitutional, as the religious duty has been cast on the Committee to arrange for the proper performance of *nitya* or daily and *naimittik* or occasional services in the temples and for proper conduct of ceremonies, functions and festivals therein generally, or on special occasions. The first part of clause (a) to sub-section (2) cannot be said to be interfering with right to religion or religious matter. I have already answered this aspect in the earlier part of this Judgment. In any case, it will be useful to make reference to **Raja Bira Kishore Deb (supra**) (Paragraph 9) which answers this issue.

143. Counsel also argued that the Committee cannot be given unguided authority to fix fees for the performance of *naimittik* or occasional *pujas*. I find no substance in this submission. That being secular activity, the Committee is competent to deal with the same.

144. It was then argued that Section 32(2)(g) and Section 44 (1)(h) of the Act were unconstitutional, as it invested power in the Committee to establish new institution. In my opinion, even this submission will have to be only stated to be rejected. This is so because the Act has been enacted not only to abolish the specified hereditary rights, privileges of ministrants and priestly classes functioning in the temples at Pandharpur and for acquisition of such rights and privileges and for the vesting thereof in a Committee established for the purpose, but is also an Act for better administration and governance of these temples, their endowments and the amalgamation of the trust and for matters connected therewith. Clause (g) of Section 32(2) of the Act reads thus:

> "32(2)(g) to establish an institution to be called *Tukaram Maharaj Sant Peeth* for imparting knowledge of, and giving

> instructions in, the practice and propagation of the spirit, tenets and philosophy of the teachings of all saints who have preached humanitarianism and Social equality; and especially for carrying on research in, and the study of, and the publication and propagation of, the writings of the saints of the *Warkari Sampradaya* and *Bhagwat Dharma*."

145. The avowed object of this provision is to propagate and spread the tenets and the philosophy and teachings of all saints who have preached humanitarianism and social equality and specially for carrying on research in and the study of and the publication and propagation of the writing of saints of *Warkari Sampradaya and Bhagvad Dharma*. By no stretch of imagination, such activity can be said to be derogatory to the objectives of managing and administering the endowments and the properties of the temple at Pandharpur. In fact, the same would be beneficial and further the cause of secularism, humanitarianism, social equality and in particular, to educate and spread awareness thereof amongst the multitude of *Warkaries* who regularly visit the temples at Pandharpur. The argument that the provision such as this, travels beyond the original endowment or the object of the Trust as also that of the Act, does not commend to me. Similarly,

the fact that the object of the Trust at the time of registration have not been changed or that the registration of the Trust continues under the provision of the B.P.T. Act, would make no difference. No provision either in the original memorandum of Trust or the object for which it has been registered, is brought to my notice to point out as to how the purpose of Section 33(2)(g) will be derogatory to it or to the provisions of the B.P.T. Act. In my view, the object of Section 33(2)(g) is not only laudable one but in the interests of the general public. It was also argued that Article 26 makes no provision to “dispose of property”, unlike Article 19(1)(f). This, contends Counsel, is because in the matters of Religious Institutions, disposal of the property necessarily should be for religious purpose to be administered in accordance with law. This argument overlooks that the administration of property of the Temples and the endowment are to be made consistent with the objects of the Trust which is subject to the regime of the B.P.T. Act. In the present case, the Act in question would authorise disposition of the same additionally in accordance with Section 32 of the Act, which is the law made by the Legislature. This law is

enacted in the interests of the general public and to regulate and restrict the economic and financial matters of the Temples and endowments in question. Section 32(2)(g) is an attempt in that direction and also for propagation of social equality and secularism.

146. It was also argued that Section 32(2)(h) of the Act provides that save as expressly provided by this Act, the Committee shall have to comply with provisions of the B.P.T. Act. In my

opinion, there is nothing in this provision, which would affect any of the fundamental rights of the Appellants. As a matter of fact, the said provision is restating the statutory obligation of the Committee, which is also specified by Section 56 of the Act.

147. The provisions of Section 39 of the Act have been assailed being unreasonable. It is stated that the Executive Officer cannot be invested with the powers of the District Magistrate, within the specified area of the Temples though. There is no

substance in this grievance. No provision is brought to my notice that would disrobe the State Legislature to introduce such statutory fiction authorising the State Government to empower the Executive Officer to discharge the powers and perform all the duties of the District Magistrate in terms of the provisions of the Code of Criminal Procedure. That being the legislative policy and an enactment intended to be a self contained code coupled with the avowed object of the Act is to provide better administration and governance in and around the Temples, there is nexus with the object sought to be achieved by the enactment.

148. The next challenge was with regard to the provisions of Section 44 of the Act which mandates that the Temple's fund shall be utilised for the specified purpose. Clause (j) of Section 44(1) of the Act provides for repayment of the portion of the total amount determined by the State Government under Sub-section (3) of Section 18 and repayment of Government or other loans, if any. Counsel for the *Utpats* had argued that this provision would enable the Committee to utilise the Temple's Fund for matters unrelated to

religion or for the purposes of religion. In other words, the Temple's Fund will be utilised to make payment in respect of claims of the priestly classes under Section 6 read with Section 8 of the Act. What is overlooked in this argument is that the amount payable to the priestly classes to compensate them for deprivation of their hereditary rights and privileges are certainly related to the administration and maintenance of the property and endowment of the temples. That being the Legislative wisdom, the challenge to that provision on the argument that it would result in spending on matters unrelated to religion or for the purpose of religion is devoid of merits. The provision does not permit spending on matters which are not in the interests of the general public.

149. It was argued by Counsel for the *Utpats* that Section 44 (2)(f) of the Act enables the Committee for the establishment and maintenance of, or the making of any grant or contribution to any hospital, school, orphanage or similar other institution either within or without the limits of Pandharpur, is an unguided power invested in the Committee for utilisation of the Temple's Fund. This

argument seems to be attractive, but overlooks that the matters provided in sub-section (2) of Section 44 of the Act are only directory. Whereas, the matters covered by sub-section (1) of Section 44, the Committee is obliged to utilise the Temple's Fund for those purposes. It is not so in the case of matters covered by sub-section (2) of Section 44 of the Act. This is obvious from the plain language of Section as expression "may" is used in sub-section (2), whereas, "shall" is used in sub-section (1). As per the said provision, the Committee on its own cannot proceed to spend any amount for the purpose provided in Clause 44(2)(f). That, however, can be done only with the sanction of the Charity Commissioner. In any case, the purpose of such spending is related to charitable cause such as hospital, school, orphanage or similar other institution. Indeed, expression "similar other institutions" is wide enough but the same will have to be understood *ejusdem generis*. Inasmuch as, institutions sponsoring the cause of charity or philanthropic activity such as school, hospital or orphanage. Needless to observe that as and when such occasion arises, the Charity Commissioner who is expected to be

in the control of the situation of every charitable trust including the religious trust, would take into account all tangible aspects to reach at the proper decision. The provision as such cannot be said to be unconstitutional. Instead, it is one for regulating and restricting the financial, economic and other secular matters of the Temple's fund. There is however, one aspect which needs to be observed. By virtue of this provision, the Committee if allowed by the Charity Commissioner, can contribute to the specified institutions, even outside the limits of Pandharpur. There is no doubt that the devotees of the temples at Pandharpur are not limited to Pandharpur only, but spread out through out Maharashtra and even the neighbouring States. It is, however, not necessary in the present proceedings to examine whether the Committee can consider of spending or contributing to any specified institution, which is established outside the limits of State of Maharashtra - as the jurisdiction of the Charity Commissioner is in respect of institutions which would have area of operation within the State of Maharashtra. In that sense, the contribution if made to the specified institution which is outside the State of Maharashtra,

whether permissible, is a matter which can be considered in appropriate proceedings. Suffice it to observe that the provision as made is not unconstitutional for the grounds pressed into service.

150. That takes us to the challenge to Section 55 of the Act. It authorises the Committee to make by-laws with the previous approval of the Charity Commissioner which is not inconsistent with the Act or any rules thereunder. This power has been invested in the Committee under Section 21 of the Act in supersession of any law, order, custom, usage or any decree, order or scheme made by any Court. Clause (a) of Section 55(1) relates to the subject of prescribing qualifications of persons for the purpose of performing *nitya* or daily or *naimittik* or occasional *pujas* or *upchars* in the temple, their recruitment and conditions of services. In the earlier part of this Judgment, while analysing the sweep of Section 4 of the Act, we have noticed that Section 4 of the Act purports to interdict the hereditary rights and privileges of the priestly classes to perform *pujas, sevas* or services to the deities

on behalf of *Yajmans* and pilgrims in any of the temples covered by this Act. As to who should perform such *pujas*, necessarily will have to be regulated by the Committee, which is the subject for the proper administration and management of the temples and its properties as also for the welfare of the devotees and pilgrims. Indeed, the Committee will have to give due regard to the fact that the person to be made responsible for performing *nitya* and daily or *naimittik* or occasional *pujas* or *upchars* in the temples should possess proper qualification commensurate with the form, dignity, grandeur of *seva* or service which was being performed immediately before the appointed day. That activity being secular matter, therefore, challenge to this provision that it is unconstitutional, cannot be countenanced.

151. Clause (b) of Section 55(1) of the Act relates to subject of manner of taking *darshan* of deities and timings thereof, generally or on any specified occasion. Once again this is a secular matter related to administration and management of the temples and the welfare of the devotees. However, I have already

observed that the authority while making by-laws on the manner of taking *darshan* by the devotees will have due regard to the age-old custom and usage of taking *padasparsha darshan,* which is one of the tenets of the *Warkari Sampradaya*. While doing so, the recommendation made by the Commission on this matter may also be kept in mind. Suffice it to observe that the challenge to this provision being unconstitutional also should fail.

152. Clause (c) of Section 55(1) of the Act provides for subject on which by-laws can be made by the Committee, as the various types of *pujas* to be performed in the temples, persons who may perform the *pujas* either by themselves or through *pujaris* employed by the Committee and the issue of permits in that behalf, the charges to be paid for performing different types of *pujas.* Going by the plain language of this provision, the same essentially deals with the secular matter. So far as the *Warkaries* or devotees are concerned, they believe in only taking *padasparsha darshan*. Other *pujas* are not insisted by the multitudes of *Warkaries*. The devotees who intend to perform *pujas*, the Act already provides for

the types of *pujas* as mentioned in Schedule `B' of the Act. The Committee therefore can only regulate on matters as to who would perform those *pujas* either by the devotees themselves or through *pujaris* employed by the Committee and the related issues. As is noted earlier, the sweep of Section 4 of the Act is to restrict the rights and privileges of priestly classes to perform *pujas*, sevas or services of deities on behalf of *yajmans* and/or to receive demand and appropriate income therefrom or from the offerings made to the deity. The by-laws of the Committee necessarily will be in relation to such matters and consistent with the power of the Committee provided in Section 32 of the Act. Viewed in this perspective, the challenge to this provision being unconstitutional, should fail.

153. Lastly, Counsel for the *Utpats* submitted that clause (g) of Section 55(1) of the Act gives unguided power to the Committee to make by-law for any matters, which may enable devotees and pilgrims to have peaceful *darshan* of the deities in the temples; proper arrangements therefor generally, and on

specified occasions, maintenance of order in the Temples and for all other matters for the better administration of the affairs of the endowment and registered trusts and provision for operating the Temple's Fund and guidance of the officers and servants of the Committee and for the purposes of carrying out the purposes and objects of this Act. Having given thoughtful consideration, even this challenge will have to be negated being concerning secular matters.

154. While parting, I may place on record that parties had relied on other reported decisions included in the compilations, but in view of the authoritative decisions already referred to in this Judgment on the relevant issues, it is not necessary to advert to them. Moreover, I have attempted to confine the discussion only to the main issues in the context of the substantial questions of law (a) and (d) formulated at the time of admission of the Second Appeals.

155. Before parting, I intend to express word of gratitude to

the Advocates appearing for the parties as well as the intervenor appearing in-person not only for the able assistance given by them, but also agreeing to conduct the matter even during the summer vacation. But for their able assistance, it would not have been possible to conclude the hearing of these proceedings in short time.

156. Accordingly, all these Appeals fail and the same are dismissed with costs being devoid of merits.

157. At this stage, Shri.Abhyankar for the Appellants submits that the Court may issue two directions, firstly directing parties to maintain status-quo as of today for twelve weeks so as to enable the Appellants to take up the matter in Appeal. He further prays that the Respondents be directed to deposit the entire amount collected by the Committee during the pendency of the Appeals and furnish accounts to this Court so that appropriate orders can be passed for disbursal of amount to the Appellants in terms of the observations made by this Court in order dated 21st

February 1985 in Civil Application No.238 of 1985. He submits that in fact the Respondents are responsible for having failed to comply with the directions contained in the said order passed at the interlocutory stage.

158. Shri.Naphade appearing for the State submits that the Respondent would oppose the request of the Appellants requiring the Respondents to deposit the entire amount collected so far in this Court and to furnish accounts. According to him, the question of paying amount in terms of order dated 21st February 1985 would have arisen only if the Appellants were to succeed. Once it is held that the Appellants have had no right to receive or demand any amount from the *yajmans* or pilgrims or offerings made to the deity, there is no need to pay any amount of the Appellants. He further submits that in any case, the Respondent would submit to the orders of this Court.

159. Ideally, the Appellants ought to have raised this issue at the hearing of the Appeals itself, so that, the other side could have

responded to the same during arguments and not taken by surprise at this stage. In my opinion, as three Courts have already extensively considered the plea of the Appellants and answered against them, the question of granting interim relief as prayed for does not arise. The nature of relief claimed, would result in restraining the statutory Authority from carrying out its duties or functions as per the legal provisions. In any case, the controversy regarding issuing direction to the Respondents to deposit the entire amount received by them in Court, need not be gone into at this stage for two reasons. Firstly, formal application will have to be moved by the Appellants for necessary reliefs, if they are so advised. Secondly, because the Appellants have prayed that no effect be given to the decision pronounced in the Appeals today for some time so as to enable the Appellants to take up the matter in Appeal before the Apex Court, which request I am inclined to grant in the peculiar facts of the present case. For that reason, the question of requiring the Respondents to deposit any amount or to account for the cash received can be considered if and when occasion arises. It is obvious that the matter is not going to end

with the Judgment of this Court, as the Appellants are bound to carry the matter in Appeal. Accordingly, I am not issuing any direction to the Respondents for depositing any amount in this Court as requested by the Appellants for the time being. For the present, it is ordered that the parties to maintain status-quo as of today for a period of twelve weeks.

A.M.KHANWILKAR, J.